TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 662

DAMPSKIBSSELSKABET DANNEBROG, CLAIMANT OF THE MOTORSHIP "STJERNEBORG", ET AL., PETITIONERS,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 22, 1940.

CERTIORARI GRANTED FEBRUARY 26, 1940.

No. 9182

United States

Circuit Court of Appeals

For the Ninth Circuit.

DAMPSKIBSSELSKABET DANNEBROG, a corporation, as Claimant of the Motorship "STJERNEBORG",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

AKTIESELSKABET BORGESTAD, a corporation, as Claimant of the Motorship "BRAND",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

Apostles on Appeals

Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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PROCTORS OF RECORD:

For Libelants and Appellees:

Messrs. FAIRBROOK AND WILLIAMS,
Central Building,
Seattle, Washington.

For Claimants and Appellants:

Messrs. HAYDEN, MERRITT, SUMMERS & BUCEY,
Central Building,
Seattle, Washington.

In the United States Circuit Court of Appeals
for the Ninth Circuit

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee,

vs.

Motorship "STJERNEBORG",

Respondent,

DAMPSKIBSSELSKABET DANNEBROG, a corporation,

Claimant-Appellant.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee,

vs.

Motorship "BRAND",

Respondent,

AKTIESELSKABET BORGESTAD, a corporation,

Claimant.

STATEMENT

This admiralty appeal involves two cases, consolidated by stipulation in the lower court for trial, and consolidated in this court after the entry of decrees for the purpose of appeal. The two cases involve the assertion of a maritime lien for the value of fuel oil.

In both cases the libelant-appellee was Signal Oil and Gas Company of California, a corporation. In one case the [1*] respondent was the motorship "Stjerneborg", and Dampskibsselskabet Dannebrog, a corporation, was claimant-appellant. In the other case the respondent was the motorship "Brand", and Aktieselskabet Borgestad, a corporation, was claimant-appellant.

In the United States District Court for the Western District of Washington, Southern Division, the libel in rem against the motorship "Stjerneborg" was filed May 11, 1935, and the libel in rem against the motorship "Brand" was filed June 5, 1935.

After the service of process in each case the vessel was released on bond, the motorship "Stjerneborg" on May 16, 1935, and the motorship "Brand" on June 7, 1935.

By order of the District Court, under Rule 48, both cases were dismissed for want of prosecution on July 7, 1936, and reinstated by vacation of the order of dismissal on July 9, 1936.

Claimant's answer to the libel in each case was filed on May 14, 1937.

On May 9, 1938, the cases were tried and submitted to the court upon a consolidated stipulation of facts. The cases were tried before the Honorable E. E. Cushman, District Judge at Tacoma.

The court's memorandum decision in the consolidated cases was filed December 7, 1938.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

Separate findings of fact, conclusions of law, and decree were signed, filed and entered in each case by the court, and claimants' exceptions to such findings of fact, conclusions of law and decree were filed and allowed in each case, all on March 7, 1939.

[Endorsed]: Filed Apr. 5, 1939. [2]

In the District Court of the United States for the Western District of Washington, Southern Division

In Admiralty

No. 7331

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

The Motorship "STJERNEBORG",

Respondent.

LIBEL

To the Honorable Judge of the District Court of The United States for the Western District of Washington, Southern Division:

The libel of Signal Oil and Gas Company of California against the Motorship "Stjerneborg", her tackle, apparel and furniture, and against all persons lawfully intervening for their interest therein, in a case of contract, civil and maritime, alleges as follows:

I.

That the Signal Oil and Gas Company of California is a corporation duly organized and existing under and by virtue of the laws of the state of California and during all the time herein mentioned was admitted to and was doing business in the distribution of petroleum products in the states of Oregon and Washington.

II.

That on or about May 14th, 1934, at the special instance of those in charge of the Motorship "Stjerneborg" it furnished to the said vessel at the Port of Astoria, Oregon, fuel oil for use in her engines of a reasonable and agreed value of Three Thousand Eight Hundred Twenty Four Dollars and Sixty-Five Cents ($3,824.65) for which it claims a lien upon said vessel, her tackle, apparel and furniture under and by virtue of the laws of the United States governing such matters. [3]

III.

That the libelant has never received any payment with respect to such fuel oil and libelant alleges on information and belief that said vessel is now at Willapa Harbor, Washington, within the territorial jurisdiction of this Court.

IV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the use of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said vessel, her tackle, apparel and furniture, and that she may be condemned and sold in answer for the debt alleged in this libel and that this court will hear the evidence which the libelant will produce in support of the allegations of this libel and having heard will enter a decree in favor of the libelant for the amount found due and will order the same to be paid and satisfied out of the proceeds of the sale of said Motorship "Stjerneborg", together with interest and with all costs of the libelant and will otherwise right and justice administer in the premises.

JOHN S. ROBINSON
Proctor for the Libelant [4]

United States of America,
Western District of Wastington—ss.

John S. Robinson being first duly sworn on oath deposes and says:

That he is proctor for the libelant in the foregoing action; that he has read the foregoing libel, knows the contents thereof, and believes the same to be true; that he has secured his information from the libelant, its officers and agents and from certain documents and papers having to do with the matter; that he makes this verification for the reason that the libelant is a foreign corporation and that none

of its officers are now within the state of Washington.

JOHN S. ROBINSON

Subscribed and sworn to before me this 11th day of May, 1935.

[Notarial Seal] GLENN J. FAIRBROOK

Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed May 11, 1935. [5]

In the District Court of the United States for the Western District of Washington, Southern Division

In Admiralty

No. 7334

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

THE MOTORSHIP "BRAND",

Respondent.

LIBEL

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

The libel of Signal Oil and Gas Company of California against the Motorship "Brand", her tackle, apparel and furniture, and against all persons law-

fully intervening for their interest therein, in a case of contract, civil and maritime, alleges as follows:

I.

That the Signal Oil and Gas Company of California is a corporation duly organized and existing under and by virtue of the laws of the state of California and during all the time herein mentioned was admitted to and was doing business in the distribution of petroleum products in the states of Oregon, Washington and California.

II.

That on or about May 11th, 1934, at the special instance and request of those in charge of the Motorship "Brand" libelant furnished to the said vessel at Berth 166, San Pedro, California, fuel oil for use in her engines of a reasonable and agreed value of Four Thousand Six Hundred Thirty-One Dollars and Seventy-One Cents ($4,631.71) for which it claims a lien upon [6] said vessel, her tackle, apparel and furniture, under and by virtue of the laws of the United States appertaining to such matters.

III.

That libelant has never received any payment with respect to such fuel oil and libelant alleges on information and belief that said vessel is at the time of the filing of this libel at Grays Harbor, Washington, within the territorial jurisdiction of this court.

IV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the use of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said vessel, her tackle, apparel and furniture, and that she may be condemned and sold in answer for the debt alleged in this libel and that this court will hear the evidence which the libelant will produce in support of the allegations of this libel and having heard will enter a decree in favor of the libelant for the amount found due and will order the same to be paid and satisfied out of the proceeds of the sale of said Motorship "Brand", together with interest and with all costs of the libelant, and will otherwise right and justice administer in the premises.

JOHN S. ROBINSON

Proctor for Libelant [7]

United States of America,
Western District of Washington—ss.

John S. Robinson being first duly sworn on oath deposes and says:

That he is proctor for the libelant in the foregoing action; that he has read the foregoing libel, knows the contents thereof; and believes the same to be true; that he has secured his information from the libelant, its officers and agents and from certain

documents and papers having to do with the matter; that he makes this verification for the reason that the libelant is a foreign corporation and that none of its officers are now within the state of Washington.

JOHN S. ROBINSON

Subscribed and sworn to before me this 5th day of June, 1935.

[Notarial Seal] GLENN J. FAIRBROOK
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed June 5, 1935. [8]

[Title of District Court and Cause—No. 7331.]

CLAIM OF OWNERSHIP

Dampskibsselskabet, "Dannebrog", a corporation, as owner of the above named respondent motorship "Stjerneborg", her engines, machinery, tackle, apparel and furniture, intervening for its interest as such owner, appears by and through its agent, R. M. Rosenhoj, the Master of said respondent motorship, and prays that it be permitted to defend accordingly, and that the above entitled court will decree restitution to it of said motorship, and otherwise administer right and justice in the premises.

DAMPSKIBSSELSKABET,
"DANNEBROG"
By M. ROSENHOJ
Its Agent and Master of the
M.S. "Stjerneborg"

United States of America,
State of Washington,
County of King—ss.

R. M. Rosenhoj, being first duly sworn, upon oath deposes and says:

That he is the Master of the respondent motorship [11] "Stjerneborg", her engines, tackle, machinery, apparel and furniture; that as such, he is in immediate possession and control thereof.

That Dampskibsselskabet, "Dannebrog", is, and at the time of the attachment and seizure of said respondent motorship "Stjerneborg" in the above entitled cause was, the true and bona fide owner of said motorship, her engines, machinery, tackle, apparel and furniture, and as such now is, and at said time was solely entitled to the possession thereof.

That as such master and as agent for said owner he is authorized to file the foregoing Claim of Ownership.

M. ROSENHOJ

Subscribed and sworn to before me this 15th day of May, 1935.

[Seal] (sgd) LANE SUMMERS
Notary Public in and for the State of Washington, residing at Seattle.

[Service acknowledged. 5/15/35.]

[Endorsed]: Filed May 16, 1935. [12]

[Title of District Court and Cause—No. 7334.]

CLAIM OF OWNERSHIP

Comes now Aktieselskabet Borgestad, a corporation organized and existing under and by virtue of the laws of Norway, intervening for its interest in the motorship "Brand", her engines, tackle, apparel and furniture, respondent, and makes claim to said motorship as the same lies attached by the United States Marshal under process of the above entitled court, issued as prayed by libel herein; and said Aktieselskabet Borgestad alleges that it was in possession of said motorship at the time of the service of said process, and that it then was and now is the sole and bona fide owner of said motorship; that no other corporation, firm or person is the owner thereof; and further alleges that at times material to libelant's cause of action as shown by its said libel, said respondent motorship was under time charter to Vestindisk Handelskompagni (West Indian Trading Company) of Copenhagen, Denmark.

Wherefore, Aktieselskabet Borgestad prays that it be [13] permitted to defend said libel.

Dated this 6th day of June, 1935, at Seattle, Washington.

AKTIESELSKABET BORGESTAD,
a corporation,
By K. WIIG
Master of M.S. "Brand"

United States of America,
State of Washington,
County of King—ss.

K. Wiig, being first duly sworn, upon oath deposes and says:

That he is the Master of the motorship "Brand".

That Aktieselskabet Borgestad is a corporation organized and existing under and by virtue of the laws of Norway.

That as Master of the respondent M.S. "Brand" he is in possession thereof for and in behalf of said Aktieselskabet Borgestad, the owner thereof, and that he is authorized to make and verify the foregoing claim; that he has read the same, knows the contents thereof, and believes the same to be true.

K. WIIG

Subscribed and sworn to before me this 7th day of June, 1935.

H. G. FITCH
Notary Public in and for the State of Washington, residing at Tacoma.

[Endorsed]: Filed June 7, 1935. [14]

[Title of District Court and Cause—No. 7331.]

RELEASE BOND

Know All Persons by These Presents: That we, Dampskibsselskabet, "Dannebrog", a corporation, as Principal, and National Surety Corporation, a

corporation, authorized to transact a surety business within the State of Washington, as Surety, are held and firmly bound unto A. J. Chitty, as United States Marshal, for the benefit of whom it may concern, in the full sum of Five Thousand Dollars ($5,000.00), to be paid to said United States Marshall, his executors, administrators or sucessors, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally firmly by these presents.

Signed, sealed and delivered this 15th day of May, 1935.

Whereas, libel in the above entitled cause, civil and maritime, has heretofore been filed in the above entitled court by libelant above named against the above named respondent [19] vessel, her engines, tackle, apparel and furniture, for causes and reasons in said libel alleged;

Whereas, said respondent vessel now lies seized and attached in the custody of said Marshal, by virtue of process issued upon said libel;

Whereas, said Principal is filing in the above entitled cause Claim of Ownership with respect to said respondent vessel, together with the usual Stipulation for Costs, and is applying for a release of said vessel, in accordance with the admiralty rules and practices of the above entitled court;

Now, Therefore, the condition of this obligation is such that if said Principal shall abide and answer final decree in the above entitled cause, and shall

pay the money awarded (not exceeding, however, said full sum), then this obligation shall be void; otherwise the same shall remain in full force.

(Principal)
DAMPSKIBSSELSKABET,
"DANNEBROG",
By M. ROSENHOJ,
Its Agent and Master of said
M.S. "Stjerneborg."

(Surety)
[Seal] NATIONAL SURETY
CORPORATION,
a corporation,
By J. H. LOBDELL,
Its Attorney-in-fact.

United States of America,
State of Washington,
County of King—ss.

This is to certify that on this 15th day of May, 1935, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared [20] R. M. Rosenhoj, to me known to be the Master of the motorship "Stjerneborg", and as such the agent of Dampskibsselskabet, "Dannebrog", the corporation that executed the within and foregoing bond as Principal; and acknowledged the said bond to be the free and voluntary act and deed of said principal for the uses and purposes therein mentioned, and on oath stated that he was authorized to exe-

cute said bond as agent and as Master of said motorship.

In Witness Whereof I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal] LANE SUMMERS (sgd)
Notary Public in and for the State of Washington, residing at Seattle.

United States of America,
State of Washington,
County of King—ss.

This Is to Certify That on this 15th day of May, 1935, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. H. Lobdell, to me known to be the attorney-in-fact of National Surety Corporation, a corporation, that executed the within and foregoing bond, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said bond as attorney-in-fact, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and official seal the day and year in this certificate first above written.

LANE SUMMERS, (sgd)
Notary Public in and for the State of Washington, residing at Seattle.

The foregoing bond approved and notice of bonding waived.

JOHN S. ROBINSON, (sgd)
Proctor for Libelant

The foregoing bond approved.

EDWARD E. CUSHMAN,
U. S. District Judge

[Endorsed]: Filed May 16, 1935. [21]

[Title of District Court and Cause—No. 7334.]

RELEASE BOND

Know All Persons by These Presents:

That Vestindisk Handelskompagni (West Indian Trading Company) of Copenhagen, Denmark, as Principal, and Pacific Indemnity Company, a corporation authorized to transact a surety business within the State of Washington, as surety, are held and firmly bound unto A. J. Chitty, as United States Marshal, for the benefits of whom it may concern, in the full sum of Fifty-five Hundred Dollars ($5500.00), to be paid to said United States Marshal or his successors, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally firmly by these presents.

Whereas, libel in the above entitled cause, civil and maritime, has heretofore been filed in the above entitled court by libelant above named against the above named respondent motorship, her engines,

tackle, apparel and furniture, for causes and reasons in said libel alleged; [22]

Whereas, said vessel now lies seized and attached in the custody of said Marshal, by virtue of process issued upon said libel;

Whereas, claim of ownership and the usual stipulation for costs being filed herewith, application will be made hereon for the release of said respondent motorship in accordance with the admiralty rules and practice of the above entitled court;

Now, Therefore, the condition of this obligation is such that if said Principal shall abide and answer final decree in the above entitled cause, and shall pay the money awarded (not exceeding, however, said full sum) then this obligation shall be void; otherwise the same shall remain in full force.

Signed, sealed and delivered this 6th day of June, 1935, at Seattle.

(Principal)
VESTINDISK HANDELSKOMPAGNI,
(West Indian Trading Company)
By HAYDEN, MERRITT,
SUMMERS & BUCEY,
Its Proctors.

(Surety)
[Seal] PACIFIC INDEMNITY
COMPANY.
By E. A. STRICKLER.
Its Attorney-in-fact.

United States of America,
State of Washington,
County of King—ss.

This Is To Certify that on this 6th day of June, 1935, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared E. A. Strickler, to me known to be the attorney-in-fact of Pacific Indemnity Company, a corporation, that executed the within and foregoing bond, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said bond as attorney-in-fact, and that [23] the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal] LANE SUMMERS,
Notary Public in and for the State of Washington, residing at Seattle.

The foregoing bond approved and notice of bonding waived.

JOHN S. ROBINSON,
Proctor for Libelant.

The foregoing bond approved.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed June 7, 1935. [23A]

[Title of District Court and Cause—No. 7331.]

ANSWER

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

The answer of Dampskibsselskabet Dannebrog, a corporation, claimant, to the libel in the above entitled cause of Signal Oil and Gas Company of California, a corporation, admits, denies and alleges as follows:

I.

Answering Article I, claimant admits the allegations thereof.

II.

Answering Article II, claimant denies each and all of the allegations thereof, excepting only those allegations hereinafter expressly admitted.

Claimant admits that on or about May 14, 1934, at the port of Astoria, state of Oregon, libelant furnished to the motorship "Stjerneborg" diesel oil of the approximate value of $3824.65. Claimant admits that libelant claims a lien upon said motorship, but particularly denies that any lien exists. [24]

III.

Answering Article III, claimant has not sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation to the effect that libelant has never received payment

for such diesel oil, and therefore denies such allegation upon information and belief.

Claimant admits that at the time said libel was filed and process thereunder served said motorship was within the territorial jurisdiction of the above entitled court.

IV.

Answering Article IV, claimant denies each and every allegation therein contained, excepting only those allegations hereinafter expressly admitted.

Claimant admits that the above entitled cause is within the admiralty and maritime jurisdiction of the above entitled court.

For affirmative defenses to said libel, claimant alleges:

A-I.

That while a certain quantity of diesel oil was furnished by libelant to said motorship on or about May 14, 1934, at the port of Astoria, state of Oregon, it was not so furnished upon the order of the owner of said motorship or upon the order of a person or concern authorized by the owner, but, on the contrary, was so furnished upon the order of W. L. Conyn & Sons, a corporation, by libelant known to be the charterer of said motorship, under a certain charter party which provided in effect that such charterer should itself pay for all coal, oil or other fuel. [25]

A-II.

That the diesel oil so furnished on or about May 14, 1934, at the port of Astoria, state of Oregon, by libelant to said motorship was not a lienable necessary since, when ordered and received, it was not essential to the voyage then contemplated by said motorship, but was desired by the charterer merely to comply with its obligations under said charter party.

A-III.

That long prior to such diesel oil being so furnished by libelant to said motorship on or about May 14, 1934, at the port of Astoria, state of Oregon, a general contract for the sale and purchase of oil was entered into by libelant, as seller, and Anglo Canadian Shipping Co., Ltd., as buyer, which general contract was so modified as to permit said W. L. Comyn & Sons, a corporation, the charterer above named, to make purchases thereunder. That the diesel oil so furnished on or about May 14, 1934, at the port of Astoria, state of Oregon, by libelant to said motorship was ordered by said W. L. Comyn & Sons, a corporation, as buyer under said general contract, and sold by libelant and delivered to said motorship upon the personal credit and financial responsibility of said W. L. Comyn & Sons, a corporation, and not upon the credit of said motorship.

A-IV.

That on or about July 7, 1934, in recognition of then existing financial difficulties of W. L. Comyn

& Sons, a corporation, and in protection of indebtedness owing by that concern to libelant in the total sum of approximately $18,252.95 for oil previously supplied to various vessels upon the order of W. L. Comyn & Sons, a corporation, under said general contract, [26] libelant required and accepted under the provisions of a certain "pledge agreement" from W. L. Comyn & Sons, a corporation, an assignment, transfer and pledge of certain collateral therein described (subject to the prior rights of the First National Bank of Seattle) to secure payment to libelant of all said indebtedness in full, including said sum of $3824.65 on account of oil delivered to said motorship "Stjerneborg" on or about May 14, 1934, at the port of Astoria, state of Oregon, for which in the present cause libelant asserts a lien.

That subsequently, the collateral hypothecated under such pledge agreement having been liquidated and sold for an amount in excess of indebtedness owing by W. L. Comyn & Sons, a corporation, to the First National Bank of Seattle, libelant, notwithstanding its right to apply such excess in reduction of said sum of $3824.65, released such excess to W. L. Comyn & Sons, a corporation.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, such lien has been wholly waived.

A-V.

That under date of August 10, 1934, for the benefit of W. L. Comyn & Sons, a corporation, libelant subscribed to a "creditors' agreement", for the purpose of assisting W. L. Comyn & Sons, a corporation, in meeting its financial difficulties, wherein libelant agreed not to enforce prior to September 1, 1935, by legal proceedings or otherwise, directly or indirectly, payment of indebtedness owing to libelant by W. L. Comyn & Sons, a corporation, inclusive of said sum of $3824.65 for oil supplied to said motorship "Stjerneborg" on or about May 14, 1934, at the port [26A] of Astoria, state of Oregon.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, such lien has been wholly waived.

Wherefore, said libel having been fully answered, claimant prays that this court will adjudicate said motorship to be free and clear of any lien, will decree dismissal of said libel with prejudice and with costs and disbursements hereinafter to be taxed in favor of claimant and against libelant, and will award such other relief to claimant as may be just and proper.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

United States of America,
State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is one of the proctors for claimant which is a foreign corporation having no officer or agent within the State of Washington, for which reason he makes this verification; that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

LANE SUMMERS.

Subscribed and sworn to before me this 13th day of May, 1937.

[Seal] FRED S. MERRITT,
Notary Public in and for the State of Washington, residing at Seattle.

[Service acknowledged May 13, 1937.]

[Endorsed]: Filed May 14, 1937. [27]

[Title of District Court and Cause—No. 7334.]

ANSWER

To the Honorable Judge of the District Court of the United States for the Western District of Washington, Southern Division:

The Answer of Aktieselskabet Borgestad, a corporation, claimant, to the libel in the above entitled

cause of Signal Oil and Gas Company of California, a corporation, admits, denies and alleges as follows:

I.

Answering Article I, claimant admits the allegations thereof.

II.

Answering Article II, claimant denies each and all of the allegations thereof, excepting only those allegations hereinafter expressly admitted.

Claimant admits that on or about May 11, 1934, at the port of San Pedro, state of California, diesel oil of the [28] approximate value of $4631.71 was received by the motorship "Brand". Claimant admits that libelant claims a lien upon said motorship, but particularly denies that any lien exists.

III.

Answering Article III, claimant has not sufficient information or knowledge upon which to form a belief as to the truth or falsity of the allegation to the effect that libelant has never received payment for such diesel oil, and therefore denies such allegation upon information and belief.

Claimant admits that at the time said libel was filed and process thereunder served said motorship was within the territorial jurisdiction of the above entitled court.

IV.

Answering Article IV, claimant denies each and every allegation therein contained, excepting only those allegations hereinafter expressly admitted

Claimant admits that the above entitled cause is within the admiralty and maritime jurisdiction of the above entitled court.

For affirmative defenses to said libel, claimant alleges:

A-I.

That while a certain quantity of diesel oil was furnished by libelant to said motorship on or about May 11, 1934, at the port of San Pedro, state of California, it was not so furnished upon the order of the owner of said motorship or upon the order of a person or concern authorized by the owner, but, on the contrary, was so furnished upon the order of W. L. Comyn & [29] Sons, a corporation, by libelant known to be the charterer of said motorship, under a certain charter party which provided in effect that such charterer should itself pay for all coal, oil or other fuel.

A-II.

That long prior to such diesel oil being so furnished by libelant to said motorship on or about May 11, 1934, at the port of San Pedro, state of California, a general contract for the sale and purchase of oil was entered into by libelant, as seller, and Anglo Canadian Shipping Co., Ltd., as buyer, which general contract was so modified as to permit said W. L. Comyn & Sons, a corporation, the charterer above named, to make purchases thereunder. That the diesel oil so furnished on or about

May 11, 1934, at the port of San Pedro, state of California, by libelant to said motorship was ordered by said W. L. Comyn & Sons, a corporation, as buyer under said general contract, and sold by libelant and delivered to said motorship upon the personal credit and financial responsibility of said W. L. Comyn & Sons, a corporation, and not upon the credit of said motorship.

A-III.

That on or about July 7, 1934, in recognition of then existing financial difficulties of W. L. Comyn & Sons, a corporation, and in protection of indebtedness owing by that concern to libelant in the total sum of approximately $18,252.95 for oil previously supplied to various vessels upon the order of W. L. Comyn & Sons, a corporation, under said general contract, libelant required and accepted under the provisions of a certain "pledge agreement" from W. L. Comyn & Sons, a corporation, an assignment, transfer and pledge of certain collateral therein [29A] described (subject to the prior rights of the First National Bank of Seattle) to secure payment to libelant of all said indebtedness, including said sum of $4631.71 on account of oil delivered to said motorship "Brand" on or about May 11, 1934, at the port of San Pedro, state of California, for which in the present cause libelant asserts a lien.

That subsequently, the collateral hypothecated under such pledge agreement having been liquidated

and sold for an amount in excess of indebtedness owing by W. L. Comyn & Sons, a corporation, to the First National Bank of Seattle, libelant, notwithstanding its right to apply such excess in reduction of said sum of $4631.71, released such excess to W. L. Comyn & Sons, a corporation.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, such lien has been wholly waived.

A-IV.

That under date of August 10, 1934, for the benefit of W. L. Comyn & Sons, a corporation, libelant subscribed to a "creditors' agreement", for the purpose of assisting W. L. Comyn & Sons, a corporation, in meeting its financial difficulties, wherein libelant agreed not to enforce prior to September 1, 1935, by legal proceedings or otherwise, directly or indirectly, payment of indebtedness owing to libelant by W. L. Comyn & Sons, a corporation, inclusive of said sum of $4631.71 for oil supplied to said motorship "Brand" on or about May 11, 1934, at the port of San Pedro, state of California.

That if theretofore any lien existed against said motorship in favor of libelant, as claimed by its said libel, [30] such lien has been wholly waived.

Wherefore, said libel having been fully answered, claimant prays that this court will adjudicate said motorship to be free and clear of any lien, will decree dismissal of said libel with prejudice and

with costs and disbursements hereinafter to be taxed in favor of claimant and against libelant, and will award such other relief to claimant as may be just and proper.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

United States of America,
State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is one of the proctors for claimant which is a foreign corporation having no officer or agent within the State of Washington, for which reason he makes this verification; that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

LANE SUMMERS.

Subscribed and sworn to before me this 13th day of May, 1937.

[Seal] FRED S. MERRITT,
Notary Public in and for the State of Washington, residing at Seattle.

[Endorsed]: Filed May 14, 1937. [30A]

[Title of District Court and Causes—Consolidated.]

STIPULATION OF FACTS

To serve in lieu of testimony as the factual basis for determination by the court of the question of liability in the above entitled causes, consolidated solely for the purpose of trial,

It is hereby Stipulated by libelant above named and by both claimants above named that, in addition to facts admitted by [33] the pleadings or by the record elsewhere, certain other agreed facts may be considered by the court, to-wit:

(1) That libelant, a California corporation, as seller, on or about the 26th of September, 1932, entered into a written contract (Copy-Exhibit A) with Anglo Canadian Shipping Coy., Ltd., a Canadian corporation, as buyer, for the sale and purchase of fuel oil for delivery during a certain period to any vessels "which the buyer may own, charter, operate or be agents for". That under such contract various sales and purchases of fuel oil were made by such seller and buyer, not herein directly material.

(2). That on or about the 30th day of March, 1933, upon telephone request from W. L. Comyn & Sons, a Washington corporation, that 565 tons of Diesel oil be supplied under said contract to the vessel "Nyhorn" at San Pedro, California, libelant, by telegram of March 30, 1933, (Copy-Exhibit B) solicited authority for such sale under said contract, and by telegram dated April 1, 1933 (Copy-Exhibit

C). received such authority from Anglo Canadian Shipping Coy., Ltd.

That, as a result, a quantity of fuel oil was delivered by libelant to the vessel "Nyhorn" on or about the 2nd day of April, 1933, for which invoice was made by libelant to "M.S. Nyhorn and Owners, C/o Anglo Canadian Shipping Company, C/o W. L. Comyn & Sons, Seattle, Washington", and for which payment was made by W. L. Comyn & Sons on or about the 6th day of April, 1933.

That later, on or about the 16th and the 17th days of May, 1933, on the order of W. L. Comyn & Sons, two deliveries of fuel oil were made by libelant to the vessel "Stjerneborg" [34] at San Pedro; that covering such deliveries libelant made two invoices addressed to "M. S. Stjerneborg & Owners, C/o Anglo Canadian Shipping Coy., 425 Howe Street, Vancouver, B. C. (copy-Exhibit 1 & Ex. 2) which were mailed to W. L. Comyn & Sons by letter dated the 27th day of June, 1933 (Copy-Ex. 3) by whom the invoices were paid on or about the 6th day of July, 1933.

(3) That on or about the 19th day of May, 1933, said contract (Exhibit A) was modified "to include the fuel oil requirements of any and all vessels owned, chartered and or operated" by W. L. Comyn & Sons, and was also modified in other respects by understanding evidenced in letters from libelant to Anglo Canadian Shipping Coy., Ltd. (Copy-Exhibit D and Exhibit E).

That subsequently such modification of said contract was clarified and extended by letter dated the 31st day of May, 1933, from Anglo Canadian Shipping Coy., Ltd. to libelant (Copy-Exhibit F), instructing that libelant "bill Messrs. W. L. Comyn & Sons direct for the quantity (of oil) which may be used" by it; that such modification was further clarified and extended by letter dated the 25th day of July, 1933, from libelant to Anglo Canadian Shipping Coy., Ltd., of which a copy was passed to W. L. Comyn & Sons (Copy-Exhibit G).

That under said contract as so modified W. L. Comyn & Sons became entitled to make purchases thereunder upon its own order and credit, independent of Anglo Canadian Shipping Coy., Ltd.

(4) That under said contract libelant sold, and W. L. Comyn & Sons bought oil delivered to various vessels as directed by W. L. Comyn & Sons; that the attached tabulation (Exhibit H) lists the names of vessels to which such deliveries of oil were [35] made, the dates of invoices of purchase price by libelant, and the dates of payments therefor by W. L. Comyn & Sons.

(5) That during the period covered by said contract libelant maintained a sales register in which were kept data as to fuel oil sales to all its customers generally, listed under appropriate headings, being as follows: "Date of Invoice"; Date of Payment"; "Date of Delivery"; "Invoice Number"; "Barrels"; "Value $ "; "Customer's Name."

That from the first delivery by libelant under said contract on the 9th day of October, 1932, until the 2nd day of February, 1934, all sales, whether made to Anglo Canadian Shipping Coy., Ltd., or W. L. Comyn & Sons, were entered under the name of Anglo Canadian Shipping Coy., Ltd., in said register; that on the 2nd day of February, 1934, the name of W. L. Comyn & Sons was added in said sales register, and sales made to it were entered therein under its name.

(6) That during the life of said contract certain correspondence passed between libelant and W. L. Comyn & Sons relative to invoices, to credit, and to payment, which included letters and telegrams as follows:

Letter to libelant dated July 28, 1933 (Copy-Ex. I)

Letter from libelant dated Oct. 5, 1933 (Copy-Ex. J)

Letter to libelant dated Dec. 14, 1933 (Copy-Ex. K)

Letter from libelant dated Jan. 4, 1934 (Copy-Ex. L)

Letter from libelant dated Jan. 18, 1934 (Copy-Ex. M)

Wire from libelant dated Jan. 20, 1934 (Copy-Ex. N)

Wire to libelant dated Jan. 20, 1934 (Copy-Ex. O)

Letter to libelant dated Jan. 22, 1934 (Copy-Ex. P) [36]

Letter from libelant dated Jan. 23, 1934
(Copy-Ex. Q)
Wire to libelant dated Feb. 6, 1934
(Copy-Ex. R)
Letter to libelant dated Feb. 7, 1934
(Copy-Ex. S)
Letter from libelant dated Feb. 9, 1934
(Copy-Ex. T)
Letter from libelant dated Mar. 20, 1934
(Copy-Ex. U)
Letter to libelant dated Mar. 24, 1934
(Copy-Ex. V)
Letter to libelant dated Mar. 30, 1934
(Copy-Ex. W)
Letter to libelant dated Apr. 10, 1934
(Copy-Ex. X)
Letter from libelant dated Apr. 20, 1934.
(Copy-Ex. Y)
Letter to libelant dated Apr. 24, 1934
(Copy-Ex. Z)
Letter to libelant dated Apr. 30, 1934
(Copy-Ex. A-1)

(7) That when buying oil from libelant under said contract, orders by W. L. Comyn & Sons were customarily transmitted by telegram or letter to libelant at its Los Angeles office, delivery being made for libelant by the Standard Oil Company, or other supplier, to a designated vessel, from whose chief engineer or master a receipt was usually taken, on the basis of which W. L. Comyn & Sons

was later invoiced for the purchase price. That sometimes disclosing and sometimes not disclosing the relationship of W. L. Comyn & Sons to the vessel, such orders include letters, telegrams and acknowledgments thereof, as follows:

Comyn's letter (John Bakke) dated Jan. 2, 1934 (Copy-Ex. B-1)

Comyn's letter (Nordpol) dated Jan. 18, 1934 (Copy-Ex. C-1)

Comyn's letter (Zaanland) dated Jan. 22, 1934 (Copy-Ex. D-1)

Comyn's wire (Amstelland) dated Feb. 6, 1934 (Copy-Ex. E-1)

Comyn's letter (Amstelland) dated Feb. 8, 1934 (Copy-Ex. F-1)

Libelant's acknowledgment (Amstelland) dated Feb. 9, 1934 (Copy-Ex. G-1)

Comyn's wire (Nyhorn) dated Feb. 14, 1934 (Copy-Ex. H-1)

Comyn's letter (Nyhorn) dated Feb. 14, 1934 (Copy-Ex. I-1) [37]

Comyn's letter (Nyhorn) dated Feb. 26, 1934 (Copy-Ex. J-1)

Comyn's letter (Stjerneborg) dated Mar. 6, 1934 (Copy-Ex. K-1)

Comyn's letter (Nordhval) dated Mar. 19, 1934 (Copy-Ex. L-1)

Libelant's acknowledgment (Nordhval) dated Mar. 22, 1934 (Copy-Ex. M-1)

Comyn's letter (Brand) dated May 1, 1934 (Copy-Ex. N-1)

Comyn's letter (Stjerneborg) dated May 1, 1934 (Copy-Ex. O-1)

Comyn's wire (Sunnanvik) dated May 5, 1934 (Copy-Ex. P-1)

Comyn's letter (Nordpol) dated May 21, 1934 (Copy-Ex. Q-1)

Comyn's letter (Samuel Bakke) dated May 29, 1934 (Copy-Ex. R-1)

Comyn's letter (Belpamela) dated June 5, 1934 (Copy-Ex. S-1)

Libelant's acknowledgment (Belpamela) dated June 11, 1934 (Copy-Ex. T-1)

Comyn's letter (Aurora) dated June 11, 1934 (Copy-Ex. U-1)

(8) That under said contract libelant caused to be delivered to the vessel "Brand", on the order of W. L. Comyn & Sons, a quantity of fuel oil at Point Wells, Washington, on or about the 26th day of April, 1934; that although written order for such quantity of oil has not been located, a delivery receipt on that date was signed by the chief engineer of the vessel, upon which he made endorsement reading: "For time charterer's account" (photostatic copy-Ex. A-2), and later libelant issued its invoice for $638.57, addressed to "M.S. Brand and Owners, C/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington" (Copy-Ex. B-2).

That under said contract libelant caused to be delivered to the vessel "Brand", on the order of W. L. Comyn & Sons, a quantity of fuel oil at San Pedro, California, on or about the 11th day of May, 1934; that this quantity of oil was ordered by letter from W. L. Comyn & Sons dated May 1, 1934 (Copy-Ex. C-2), and was acknowledged in letter by libelant, dated May 7, 1934 (Copy-Ex. D-2); [38] that a delivery receipt on May 11, 1934, was signed by the chief engineer of the vessel, upon which he made endorsement reading: "For time charterer's account" (Photostatic Copy-Ex. F-2), and later libelant issued its invoice for $3993.14, addressed to MS Brand and Owners, C/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington" (Copy-Ex. G-2).

That said deliveries, as evidenced by said delivery receipts (Ex. A-2 and Ex. F-2) and by said invoices (Ex. B-2 and Ex. G-2), in the total sum of $4631.71, constitute the claim in suit, upon which libelant seeks recovery against the respondent vessel "Brand".

(9) That under said contract libelant caused to be delivered to the vessel "Stjerneborg", on the order of W. L. Comyn & Sons, a quantity of fuel oil at Astoria, Oregon, on or about the 15th day of May, 1934; that this quantity of oil was ordered by W. L. Comyn & Sons in letter dated May 1, 1934, reciting that "the M S Stjerneborg which is at present on our time charter will be loading a cargo of

lumber to China and Japan about the middle of May at Grays Harbor", and requesting delivery of oil at Aberdeen (Copy-Ex. H-2); that to this letter libelant replied by telegram, dated May 7, 1934, suggesting oil delivery at Astoria (Copy-Ex. I-2); that by letter of May 7, 1934, W. L. Comyn & Sons acquiesced in libelant's suggestion for oil delivery at Astoria (Copy-Ex. J-2); that W. L. Comyn & Sons notified libelant of the arrival of the vessel at Astoria by telegram dated May 14, 1934 (Copy-Ex. K-2); that by letter dated May 14, 1934, libelant acknowledged advice from W. L. Comyn & Sons as to the arrival of the vessel at Astoria for oil (Copy-Ex. L-2); that on [39] May 15, 1934, delivery receipt was signed by the chief engineer and the master of the vessel (Photostatic copy-Ex. M-2), and later libelant issued its invoice for $3824.65, addressed to "MS Stjerneborg and Owners, C/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington" (Copy-Ex. N-2).

That said delivery as evidenced by said delivery receipt (Ex. M-2) and by said invoice (Ex. N-2) in the sum of $3824.65, constitute the claim in suit, upon which libelant seeks recovery against the respondent vessel "Stjerneborg".

(10) That such deliveries of oil to the vessel "Brand" and to the vessel "Stjerneborg" were not made upon the order of the master or the chief engineer thereof, but upon the order of W. L. Comyn & Sons.

That at the time of such orders for and such deliveries of oil on account of which libelant seeks recovery, W. L. Comyn & So. s was related to said vessels only as charterer, under current "Brand" charter party (Photostatic copy-Ex. O-2) and under current "Stjerneborg" charter party (Photostatic copy-Ex. P-2).

That both said charter parties, among other provisions, contained the following:

> "2. That the Charterers shall provide and pay for all the Coals except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Captain, Officers or Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which steamer is responsible, then all such charges incurred shall be paid by owners. * * *
>
> "3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal left in the Bunkers at Ninety Cents (90c) U. S. Currency per barrel at the respective places where she is delivered to them." * * *
>
> "29. Wherever the word 'Coal' may appear in this charter party it shall be understood to mean 'Diesel Oil Fuel', and wherever the word 'Steamer' may appear, it shall be understood to mean 'Motorship'." [40]

That said "Brand" charter party also contained the following clause:

"13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 300 tons."

That said "Stjerneborg" charter party also contained the following clause:

"13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 400 tons."

That both before and after said contract (Exhibit A) was modified to include W. L. Comyn & Sons, it was in business not as a vessel owner, but as a commission merchant, a freight contractor and broker, and as an operator of vessels, sometimes for owners' account and sometimes for charterer's account; that the character of the business of W. L. Comyn & Sons was either known to or easily ascertainable by libelant.

(11) That as a result of a strike of longshoremen, effective in most ports of the Pacific Coast, few vessels loaded or discharged cargo, and few vessels moved in commerce from the middle of May, 1934, to the end of July, 1934; that partly in consequence of this condition, W. L. Comyn & Sons became financially embarrassed, and gradually delayed from time to time in making payments to libelant for oil bought under said contract.

(12) That from the 15th day of May, 1934, the date of receiving oil at Astoria, Oregon, to the 14th

day of May, 1935, the date of seizure under process in rem in this proceeding, the vessel "Stjerneborg" arrived at and departed from various ports of call on the Pacific Coast of North America (List-Ex. Q-2).

That from the 14th day of May, 1934, the date of receiving oil at San Pedro, California, to the 5th day of June, [41] 1935, the date of seizure under process in rem in this proceeding, the vessel "Brand" arrived at and departed from various ports of call on the Pacific Coast of North America (List-Ex. R-2).

(13) That W. L. Comyn & Sons, to avoid possible seizure of certain vessels under libel then threatened by libelant, and to fortify its credit, on the 7th day of July, 1934, executed as pledgor, with libelant as second pledgee, a certain "Pledge Agreement" (Copy-Ex. S-2) covering certain securities, subject to prior pledge to the First National Bank of Seattle, to secure, among other obligations, the indebtedness of W. L. Comyn & Sons to libelant, for which libelant seeks to recover herein, on account of oil delivered to the vessel "Stjerneborg", in the sum of $3824.65, and on account of oil delivered to the vessel "Brand" in the sum of $4631.71. That such "Pledge Agreement" contained the following language:

> "Nothing herein contained shall preclude the pledgee from collecting on any indebtedness or obligation hereby secured without resorting to

said collateral. Nothing herein contained shall constitute any release or waiver of any lien which Signal Oil and Gas Company, a Delaware corporation, may have on or against the vessels hereinabove described for fuel oil supplied to such vessels."

That thereafter from time to time libelant authorized and permitted further loans and advances by the First National Bank of Seattle either to or for W. L. Comyn & Sons against said collateral in the sum of $900, and authorized and permitted to be released to W. L. Comyn & Sons proceeds from the liquidation of such collateral securities in the sum of $1474.96, by the execution of a release, dated September 22, 1934, of the First National Bank of [42] Seattle and W. L. Comyn & Sons from said pledge agreement.

(14) That practically contemporaneously with the execution of libelant's release of said "Pledge Agreement", it signed "Creditors' Agreement" (Copy Ex. T-2), thereby joining with other creditors in granting to W. L. Comyn & Sons extension of time to meet all of its obligations, as provided therein; that such "Creditors' Agrement" contained the following language:

"This agreement is signed by Signal Oil and Gas Company with the understanding that nothing therein contained shall constitute any release or waiver of any lien or the right to a lien which Signal Oil and Gas Company, a Delaware corporation, has or may have on or against

any vessels for supplies furnished said vessels, or any of them, while said vessels, or any of them, were entrusted to the management of the debtor named in said agreement, provided, however, that Signal Oil and Gas Company agrees not to enforce such liens against any of said vessels for the period this agreement is in effect unless and excepting enforcement is necessary to prevent the loss of said lien rights by destruction, sale or other disposition of said vessels, or any of them."

(15) That W. L. Comyn & Sons, in recognition of its insolvency, released libelant from "Creditors' Agreement" by letter dated April 3, 1935 (Copy-Ex. U-2).

(16) That the quantity of oil on board the vessel "Stjerneborg" at the time of arrival at Astoria, Oregon, on May 15, 1934, prior to receiving oil then and there from libelant, was 91 tons, as shown by statement of the master dated May 23, 1934 (Copy-Ex. V-2).

That the quantity of oil received by the vessel "Stjerneborg" then and there was 501 tons, as shown by abstract of log, certified by the master and first officer (Copy-Ex. W-2). [43]

That on or about July 5, 1934, at Vancouver, B. C., the vessel "Stjerneborg" received 69.82 tons of oil—such quantity, however, not being supplied by or for libelant.

That the quantity of oil remaining on board the vessel "Stjerneborg" on August 15, 1934, upon her

redelivery under the then current charter party by W. L. Comyn & Sons as charterer to the owner at Sydney, Australia, was 402 tons, as shown by statement signed by the master and first officer of the vessel (Copy-Ex. X-2) and as shown by certificate of redelivery signed by the master and Comyn, Smith & Company, Agents for W. L. Comyn & Sons at Sydney (Copy-Ex. Y-2).

GLENN J. FAIRBROOK
substituted for
JOHN S. ROBINSON,
Proctors for Libelant
above named.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimants
above named. [44]

EXHIBIT A

FUEL OIL CONTRACT

This Contract, dated the twenty-sixth day of September, 1932, between the Signal Oil and Gas Company, a corporation, hereinafter called the Seller, and Anglo Canadian Shipping Coy. Ltd. of Canada, hereinafter called the Buyer.

Witnesseth That:

Article I.

Period and Quantity

The Seller hereby sells to the Buyer and the Buyer buys from the Seller for delivery during a

period of Fifteen months beginning October 1st, 1932, and ending December 31st, 1933, all Fuel Oil and Fuel Oil 27 Plus up to and not exceeding a total of One Hundred eighty thousand (180,000) barrels, at rate of not more than 20,000 barrels during any one calendar month, which may be required by the buyer, during said period for the current fuel purposes of any vessels which the buyer may own, charter, operate or be agents for during said period, the said oil, up to the quantity specified to be the fuel exclusively used during the said period for the said purposes.

This contract shall remain in full force and effect from and after the expiration date above named until one hundred and eighty days' written notice shall have been given by one party to the other of its intention to terminate the same, provided, that such notice shall not be given by either party prior to the expiration date, above named. Seller shall not be obligated to deliver in any one month during such additional period a quantity greater than the monthly quantity specified above.

Article II.

Definition of Barrel and Gallon

The term "Barrel" when used herein, designates and is equivalent to forty-two (42) American bulk gallons, and the term "Gallon" when used herein, designates and is equivalent to two hundred and thirty-one (231) cubic inches.

Article III.

Quality of Oil

The said Fuel oil shall be the Seller's commercial grade, in accordance with specification for Bunker Fuel "C" in United States Government Department of Commerce, Bureau of Mines Technical Paper 323 B, except as to water and nonpetroleum sediment, and Fuel Oil 27 Plus shall be the seller's commercial grade having a gravity in degrees A.P.I. of not less than 27. [45]

Article IV.

Delivery

The said oil shall be delivered by the Seller on the orders of the Buyer to said vessels at the Standard Oil Company of California's plants at the waterfront, San Pedro and Richmond, California; Astoria and Willbridge (Portland), Oregon; Aberdeen and Point Wells, Washington; at Panama Canal Oil Crib, Balboa and Cristobal, Canal Zone, and/or by barge to vessels along the waterfront, San Pedro and/or San Francisco, California, in three thousand (3,000) barrel lots or less at option of Seller.

Article V.

Price

The price and/or prices which the buyer shall pay to the Seller in Gold Coin of the United States of America of its present weight and fineness or the equivalent in lawful money of the United States of America, for deliveries of oil hereunder shall be for each delivery hereunder:

For Fuel Oil at waterfront plants of Supplier:

San Pedro, California, Fifty-five cents (55¢) a barrel.

Richmond, California, Seventy cents (70¢) a barrel,

Astoria and Willbridge (Portland), Oregon, Eighty-five cents (85¢) a barrel.

Aberdeen and Point Wells, Washington, Eighty-five cents (85¢) a barrel.

Balboa and Cristobal, C. Z., Seller's current price at time of each delivery, but not to exceed One Dollar and five cents ($1.05) a barrel.

For Fuel Oil 27 Plus at waterfront plants of Suppliers:

San Pedro, California, Eighty-five cents (85¢) a barrel.

Richmond, California, Eighty-nine cents (89¢) a barrel.

Astoria and Willbridge (Portland), Oregon, One dollar and five cents ($1.05) a barrel.

Balboa and Cristobal, C. Z., Seller's current price at time of each delivery, but not to exceed One Dollar and sixty cents ($1.60) a barrel.

For Fuel Oil by barge:

Along waterfront, San Pedro, California, Fifty-five cents (55¢) a barrel.

Along waterfront, San Francisco, California, Seventy cents (70¢) a barrel.

For Fuel Oil 27 Plus by barge:

Along waterfront, San Pedro, California, Eighty-five cents (85¢) a barrel.

Along waterfront, San Francisco, California, Eighty-nine cents (89¢) a barrel. [46]

The first party agrees to give the second party the benefit of its posted market price ruling on the day of delivery for fuel oils, should it be lower than the price fixed herein.

Article VI.

Payment

The Buyer shall pay the Seller on or before the 10th of each calendar month for all deliveries made hereunder during the preceding calendar month. If at any time the Buyer shall fail to make any payment due hereunder or if the credit of the Buyer shall for any cause be deemed unsatisfactory by the Seller the Seller may, before making further deliveries, require the Buyer to pay for said oil with each order or may suspend deliveries hereunder until such payment has been made or may terminate this contract. No such suspension or termination shall affect the obligations of the Buyer hereunder and such failure to pay shall be deemed a breach of this entire contract.

Article VII.

Inspection and Acceptance

(a) The inspection of said oil for determination of quantity and quality shall be made in the presence of properly accredited representatives of the Buyer and of the Seller at time of each delivery. If properly accredited representatives of the Buyer are not present at such time of inspection then the

Seller's measurements and determinations of quantity and quality shall be deemed correct and no oil shall be rejected or claim as to quantity or quality allowed therefor after delivery thereof.

Sampling

(b) All samples of said oil for inspection purposes shall be taken at the time of delivery (if not arranged for otherwise) from the tank and/or barge from which delivery is made, in such manner as to secure a sample representative of the entire delivery.

Testing for Water and Non-Petroleum Sediment

(c) All determinations for water and non petroleum sediment contained in said oil shall be made in accordance with Method Number 300.31 United States Government Department of Commerce, Bureau of Mines Technical Paper 323B, pages 79-81.

Article VIII.

Measurement

(a) The measure of each delivery of said oil shall be made in the tank and/or barge from which the said oil is delivered, at the time of delivery. [47]

Correction for Temperature

(b) In determining the net volume of oil delivered hereunder adjustment in volume to 60° F. owing to difference in temperature shall be made in accordance with Abridged Volume Correction Table for Petroleum Oils, Supplement to Circular No. 154 of the U. S. Bureau of Standards, Issued October 8th, 1925.

Allowance for Water and Non-Petroleum Sediment

(c) All water and non-petroleum sediment contained in the said oil in excess of two per cent (2%), shall be deducted when determining the measure of each delivery providing claim therefor is made within ten (10) days after delivery thereof.

Article IX.

Charge or Tax

(a) Any tax imposed by any governmental authority upon the production, manufacture, storage, transportation or sale of the said goods delivered hereunder, or upon any vessel or pipe line used therein, shall be added to the prices herein stated and shall be paid for by the Buyer while the same is in effect.

Prevention of Performance

(b) The Seller shall not be obligated to deliver or the Buyer obligated to receive or use the said oil, when and while, and to the extent that the Buyer is prevented or hindered from receiving and using, or the Seller from manufacturing and making deliveries in its customary manner, by act of God, fire, strike, partial or total interruption or loss or shortage of transportation facilities, commandeering of raw materials, products, plants, or facilities, or by other similar or different acts of civil or military authorities, or by any cause beyond the control of the Seller or the Buyer, whether similar to the causes herein specified or not.

Article X.

Breach of Contract and Measure of Damages

(a) In the event of a breach of this contract by either the Seller or the Buyer, the measure of the estimated requirements of the said oil herein agreed to be used for the unexpired term of this contract shall be the average monthly use of oil during the months that oil was used for the purposes above stated, not exceeding twelve (12) months next preceding such termination, and the damages for such breach by either the Seller or the Buyer shall be the difference, if any, between the price herein fixed and the market price of the undelivered oil at the nearest market to the place of delivery and at the time of the breach; [48] if there be no such difference, the Seller's damages for such breach shall be the Seller's loss of profits on such undelivered oil. All claims for special consequential or other damages, different from those hereinabove set forth are hereby waived.

(b) The waiver of any breach of any provision hereof shall not be deemed to be a waiver of any other provision hereof or of any subsequent breach of such provision.

Article XI.

Governing Laws Contract Non-Assignable

(a) This contract and the interpretation hereof shall be governed by the laws of the State of California.

(b) This contract shall not be assignable by act of the Seller or Buyer, or by operation of law, and

shall not be deemed an asset in, and at the option of either party shall terminate in the event of, any voluntary or involuntary receivership, bankruptcy or insolvency proceedings.

(c) This instrument contains the entire contract. There are no oral promises, representations or warranties affecting it.

(d) Time is of the essence hereof.

In Witness Whereof, the parties hereto have executed this contract.

SIGNAL OIL AND GAS COMPANY

(Signed) S. B. MOSHER,
President.

(Signed) H. J. MARCH,
Secretary.

ANGLO CANADIAN SHIPPING COY. LTD.

(Signed) A. B. GRAHAM,
Director. [49]

EXHIBIT B

Los Angeles, Calif.
March 30, 1933.

Anglo Canadian Shipping Coy
425 Howe Street
Vancouver, B. C.

We have received long distance telephone from W. L. Comyn & Sons requesting we furnish five hundred sixty-five tons Twenty-four Plus Diesel Oil

for Steamship Nyhorn at San Pedro and including this shipment under your fuel oil contract with us Stop Will you please wire us authorization. Make this delivery and bill under your contract.

SIGNAL OIL & GAS COMPANY
811 West 7th St., Los Angeles. [50]

EXHIBIT C

1933 Apr 1 AM 3 02

PRA 9 24 NL—X Vancouver BC 31
Signal Oil & Gas Co
LosA

Referring your day letter as we are also interested Motorship Nyhorn we concur in delivery oil as requested by Messrs. W. L. Comyn and Sons.

ANGLO CANADIAN SHIPPING
CO. LTD. [51]

EXHIBIT 1

Invoice
Signal Oil and Gas Company
Petroleum and Its Products
General Offices
Signal Oil Building
Los Angeles, Calif.

MS Stjerneborg and Owners
c/o Anglo-Canadian Shipping Coy.
425 Howe Street,
Vancouver, B. C.

Invoice No. F-728
Invoice Date May 19, 1933
Vender's No. 95705
Date Shipped
Shipped to MS Stjerneborg & Owners
Destination San Pedro, Calif.
Shipped Via Barge #7
Shipped from El Segundo, Calif.
Prepaid or Collect
Customer's Order No.
F. O. B.

Car No.—
Ticket No. 7217.
Com.—Fuel Oil 27 Plus.
Gross Bbls.—2,637.54.
Grav.—
Temp.—65.
Corr. Factor—.9980.
Net Ship't.
Bbls.—2,632.26.
Price—.85.
Amt.—$2,237.42. [52]

EXHIBIT 2

Invoice
Signal Oil and Gas Company
Petroleum and Its Products
General Offices
Signal Oil Building
Los Angeles, Calif.

MS Stjerneborg and Owners
c/o Anglo-Canadian Shipping Coy.
425 Howe Street,
Vancouver, B. C.

Invoice No. F-727
Invoice Date May 19, 1933
Vendor's No. 95711
Date Shipped May 17, 1933
Shipped to MS Stjerneborg & Owners
Destination San Pedro, Calif.
Shipped Via Pipe Line
Shipped from El Segundo, Calif.
Prepaid or Collect
Customer's Order No.
F. O. B.

Ticket No.—
Com.—Fuel Oil.
Gross Bbls.—2,151.88.
Grav.—
Temp.—66.
Corr. Factor—.9976.

Net Ship't.
Gal.—
Bbls.—2,146.72.
Price—.85.
Amt.—$1,824.71. [53]

EXHIBIT 3

Copy

Airmail.

June 27, 1933.

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington.

We are enclosing herewith copies of the following invoices, covering fuel oil deliveries to the S.S. "Stjerneborg":

#727, May 17, 1933—	$1,824.71
#728, " 16, 1933—	2,237.42
Total	$4,062.13

May we kindly have your remittance to cover these invoices inasmuch as payment became due on June 10, 1933.

Thanking you, we are

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By .....

C
Encl.. [54]

EXHIBIT D

Signal Oil and Gas Company
New Address
811 West Seventh Street
Los Angeles

May 19th, 1933

Anglo-Canadian Shipping Coy. Ltd. of Canada,
425 Howe St.,
Vancouver, B. C.

Gentlemen:

With reference to the contract between this company and yourselves, dated September 26th, 1932, covering the purchase and sale of Fuel Oil and Fuel Oil 27 plus for delivery beginning October 1, 1932, and ending December 31st, 1933, and thereafter until terminated by 180 days' written notice from either party to the other.

It is hereby understood and agreed that said 180 day notice will not be given by either of us prior to July 1, 1934.

The contract is further modified to include the fuel oil requirements of any and all vessels owned, chartered, and/or operated by Dominion Commonwealth Line and/or Cascade Line, and/or W. L. Comyn & Sons. The contract quantity shall be increased up to but not exceeding 500,000 barrels.

Articles IV and V of the contract, with regard to delivery points and price, shall be and the same are hereby amended to include deliveries at dock Honolulu, T. H., at a price of $1.05 a barrel for Fuel Oil and $2.02 a barrel for Fuel Oil 27 plus.

Said contract as above modified, and all of the terms and provisions thereof, is hereby ratified and confirmed.

Your signature below shall indicate your agreement to the foregoing.

Very truly yours,

SIGNAL OIL & GAS COMPANY
(Signed) S. B. MOSHER,
President.

ANGLO CANADIAN SHIPPING COY. LTD., of Canada
(Signed) A. B. GRAHAM. [55]

EXHIBIT E

May 19, 1933

Anglo-Canadian Shipping Coy., Ltd. of Canada,
425 Howe Street,
Vancouver, B. C.

Gentlemen:

Enclosed herewith are three copies of a Letter Contract, modifying our Fuel Oil Contract with you, which was made September 26, 1932. The accompanying modification increases the quantity of fuel oil up to but not exceeding 500,000 barrels. If this amount is not satisfactory, kindly change the same and initial.

Kindly sign and return two copies for our files.

Very truly yours,

SIGNAL OIL & GAS COMPANY

By S. B. MOSHER,

President.

SBM:TFC

Enc. [56]

EXHIBIT F

May 31st, 1933.

The Signal Oil and Gas Company,
811 West 7th Street,
Los Angeles, California.

Dear Sirs:

Attention Mr. S. B. Mosher

Wish to thank you for your kind letter of the 19th inst. enclosing three copies of "Letter Contract" modifying our fuel oil contract as of September 26th, 1932.

As requested we have signed and are returning herewith two copies for your files.

It is our understanding that you will, of course, bill Messrs. W. L. Comyn & Sons direct for the quantity which may be used for his Cascade Line and/or his own service. You will bill us for that oil which is ordered through the name of the Dominion

Commonwealth Line and the Anglo Canadian Shipping Coy. Ltd.

Yours very truly,
ANGLO CANADIAN SHIPPING COY. LTD.,
By A. B. G.

ABG BB

CC Mr. W. L. Comyn.

Herewith copy of original contract as of Sept 26th, 1932, with amendment as referred to above.

ABG [57]

EXHIBIT G

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

July 25, 1933

Anglo-Canadian Shipping Co., Ltd.
425 Howe Street,
Vancouver, B. C.

Attention: Mr. A. B. Graham.

Gentlemen:

We have been requested by Mr. Moore of W. L. Comyn & Sons to advise him whether we are in position to make deliveries of 27 Plus Diesel Oil at the following locations.

Bellingham,
Aberdeen,
Point Wells,
Tacoma,
Seattle.

These points are not included under our contract dated September 26, 1932.

In the meantime, by telegraphic correspondence, we have made a delivery to your SS "Nyhorn" of 27 plus Diesel Oil at Point Wells.

On investigation we find that our facilities are such that it would be impossible for us to furnish you with 27 plus Diesel Oil at Seattle, Tacoma, or Bellingham.

At Aberdeen our facilities are limited but we would be able to supply you, provided that we were given two weeks' notice in advance of the time that delivery is required.

We would be able to make deliveries at Point Wells at any time.

Due to particular handling costs at these latter two points, it would be necessary for us to charge you $1.15 per barrel for all deliveries of 27 plus Diesel Oil made at Aberdeen or Point Wells. We would be willing to include delivery of 27 plus at these points at $1.15 per barrel for the balance of our contract.

Our original telegram quoting price of $1.05 for the recent shipment to the SS "Nyhorn" was made in error during the writer's absence, and our billing will be forwarded to you on that basis.

If you desire that we prepare and send you a rider including these points under the contract will you so advise?

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By R. H. GREEN

CC-
W. L. Comyn & Sons,
Coleman Building,
Seattle, Washington.
Attention: Mr. Moore.
RHG:TC [58]

EXHIBIT H

TABULATION OF NAMES OF VESSELS, DATES OF OIL DELIVERIES, DATES OF INVOICES, AND DATES OF PAYMENT

Vessel	Date Delivered	Date Invoiced	Date Paid
Nyhorn	June 6, 1933	June 12, 1933	July 31, 1933
"	July 22, 1933	July 28, 1933	Sept. 14, 1933
"	Sept. 22, 1933	Sept. 26, 1933	Nov. 9, 1933
John Bakke	Oct. 8, 1933	Oct. 8, 1933	Oct. 23, 1933
Samuel Bakke	Nov. 4, 1933	Nov. 4, 1933	Dec. 8, 1933
Nordhval	Nov. 14, 1933	Nov. 14, 1933	Jan. 22, 1934
Hoegh Trader	Nov. 20, 1933	Nov. 20, 1933	Dec. 26, 1933
Tigre	Dec. 12, 1933	Dec. 12, 1933	Jan. 30, 1934
"	Dec. 15, 1933	Dec. 15, 1933	Jan. 30, 1934
John Bakke	Dec. 20, 1933	Dec. 20, 1933	Feb. 9, 1934
John Bakke	Jan. 12, 1934	Jan. 12, 1934	Feb. 9, 1934
Zaanland	Jan. 21, 1934	Jan. 21, 1934	Mar. 9, 1934
Nordpol	Jan. 24, 1934	Jan. 24, 1934	Mar. 3, 1934
Zaanland	Jan. 27, 1934	Jan. 27, 1934	Mar. 9, 1934
Amstelland	Feb. 2, 1934	Feb. 2, 1934	Apr. 2, 1934
"	Feb. 7, 1934	Feb. 2, 1934	Apr. 2, 1934
"	Feb. 14, 1934	Feb. 14, 1934	Apr. 2, 1934
Nyhorn	Feb. 17, 1934	Feb. 17, 1934	Apr. 27, 1934

Vessel	Date Delivered	Date Invoiced	Date Paid
Amstelland	Feb. 26, 1934	Mar. 1, 1934	Apr. 2, 1934
Stjerneborg	Mar. 14, 1934	Mar. 14, 1934	May 3, 1934
Nordhval	Mar. 26, 1934	Mar. 26, 1934	May 10, 1934
"	Apr. 18, 1934	Apr. 18, 1934	Unpaid*
Brand	Apr. 26, 1934	Apr. 26, 1934	Unpaid
Sunnavik	May 7, 1934	May 7, 1934	Unpaid**
Brand	May 11, 1934	May 11, 1934	Unpaid
Stjerneborg	May 15, 1934	May 15, 1934	Unpaid
Samuel Bakke	May 31, 1934	May 31, 1934	Sept. 5, 1934

[59]

Nordpol	June 2, 1934	June 2, 1934	Aug. 14, 1934
Belpamela	June 11, 1934	June 11, 1934	Aug. 17, 1934

(Subsequent deliveries between June 25, 1934, and February 19, 1935, made on a cash basis.)

*Libeled at California, spring 1938

**Libeled at British Columbia, summer 1935

[60]

EXHIBIT I

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

July 28, 1933

Messrs. Signal Oil Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

Enclosed, herewith, please find check in the sum of $3895.24, covering oil supplied for our account to the M.S. "Nyhorn".

We are enclosing you, herewith, copy of our telegram to Mr. Hartline under date of June 27th and we would ask, if it is possible, that you bill us directly for oil supplied for our account to vessels of our fleet or, in other words, bill us and not the Anglo Canadian Shipping Coy. Ltd. if it is possible for you so to do.

Yours very truly,
W. L. COMYN & SONS
By W. LESLIE COMYN,
President.

WLC:M
Encl. [61]

EXHIBIT J

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

October 5, 1933

Anglo-Canadian Shipping Co., Ltd. of Canada
425 Howe Street
Vancouver, B. C.

Gentlemen:

The Code of Fair Competition for the Petroleum Industry operative under the National Industrial Recovery Act and signed by President Franklin D. Roosevelt August 19, 1933, and as amended September 13, 1933, has been accepted and subscribed to by us and since September 2, we have been restricted in our business dealings thereby.

We are thoroughly in accord with the National

Recovery program and intend to adhere to the letter and spirit of the Code which compels us to handle some of our business affairs somewhat differently than we have in the past. We are assured that you also desire to cooperate one hundred per cent and the purpose of this letter is to acquaint you with the rules laid down in the Code covering the extension of credit.

The code provides that the maximum of credit shall be a maximum of credit "for fuel oil sales in tank car or barge shipments, or deliveries to ships' bunkers, to be net 30 days from date of shipment." This does not affect the establishment of shorter terms. The Code further states that "the granting of any longer term of credit by any refiner than that allowed by this schedule shall constitute an unfair method of competition."

Simply stated, it means that all accounts, unless shorter term of credit is in effect, must be paid in full on or before thirty days, or we will not be permitted to make any further credit sales until the account is paid.

We ask your support and cooperation so that we, collectively, shall do our part in aid of the National Recovery Program.

Very truly yours,

SIGNAL OIL AND GAS COMPANY

By .....

RHG MEM Vice-President.

CC—W. L. Comyn & Sons

c/o Anglo-Canadian Co., Ltd. of Canada

427 Comyn Bldg., Seattle, Washington. [62]

EXHIBIT K

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

December 14th, 1933

Messrs. Signal Oil and Gas Company,
Signal Oil Bldg.,
San Francisco, Calif.

Dear Sirs:

We are now in receipt of your account against M.S. "Hoegh Trader", which has been forwarded to Vancouver in care of the Anglo Canadian Shipping Co., Limited.

We would be much obliged if you would adjust your records so that, in the future, all of your accounts against ships operated by ourselves will come forward to this office and not to the Anglo Canadian Shipping Co., Limited, at Vancouver.

Yours very truly,
W. L. COMYN & SONS
By R. A. KENDALL

RAK:MW [63]

EXHIBIT L

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles.

January 4, 1934

W. L. Comyn and Sons,
427 Colman Building,
Seattle, Washington.

Gentlemen:

Our billing department has had some difficulty in determining which invoices should be made out to your company and which should be made out to Anglo-Canadian Shipping Company.

We have now made arrangements with our order department whereby this difficulty will be eliminated in the future; however, in checking unpaid items we have found several invoices to Anglo-Canadian which should have been sent to you.

These invoices are enclosed herewith together with duplicates of the receipts. Please destroy any invoices which may be forwarded by Anglo-Canadian as all unpaid deliveries are covered by these invoices.

We ask that you send your remittance for the two November deliveries as soon as possible to avoid any possible delay in future shipments.

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By J. H. ROUNSAVELL.
Comptroller. [64]

EXHIBIT M

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

January 18, 1934

W. L. Comyn and Sons,
427 Colman Building,
Seattle, Wash.

Gentlemen:

Please refer to our letter of January 4 with reference to our invoices misdirected to Anglo-Canadian Shipping Company.

We have received payment for deliveries to MS Nordkap and MS Nordbo from Girdwood Shipping Company on December 4 and 5, respectively, but have not received payments for any other deliveries.

The management is particularly anxious to receive your check for the November items and request that you deliver your check to us as soon as possible to enable us to comply with the code governing the petroleum industry which prohibits sales to an account over thirty days past due.

Very truly yours,
SIGNAL OIL AND GAS COMPANY
By J. H. ROUNSAVELL,
Comptroller. [65]

EXHIBIT N

Mackay Radio

RADIOGRAM

1/20/34

W. L. Comyn and Sons,
427 Colman Building,
Seattle, Wash.

Understand you are requesting delivery of fuel oil at Seattle tonight. Stop. Please advise when we may expect payment for delinquent November items. Stop. Wire reply.

SIGNAL OIL AND GAS COMPANY. [66]

EXHIBIT O

S 23 24 DL 1 Extra Rush

Seattle Wash 1/20/34 1257 PM

Signal Oil and Gas Company

Now requesting delivery only 250 ton fuel oil Portland for Steamer Zaanland not at Seattle Stop Nordhval only November item forty-eight thirty-eight eighty-eight. Have mailed you check today Stop Only just receiving remittance our freight on tlfis vessel from Europe otherwise would have mailed you check previously Stop You may expect check for oil supplied Tigre at San Francisco and at San Pedro December fifteenth next week as vessel now arrived and discharging and freight will be in next week.

W. L. COMYN & SONS. [67]

EXHIBIT P

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

January 22, 1934.

Airmail
Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

The writer has been absent from the office during the past three weeks owing to illness and only returned to the office today.

We have your letter of the 18th, and, on referring to your letter of the 4th, find you sent u. bills for the "Nordhval" delivery, which is a November delivery, and for the "Tigre", which is a December delivery.

In looking into your letter of the 4th, we find that November delivery to the "Hoegh Trader" was paid by us under date of December 26th and we hold your receipt therefor in the sum of $3524.38.

"Nordhval" November Item: Check was sent you on Saturday for $4838.88. This takes care of all November deliveries made by your good selves.

December delivery is "Tigre" in two amounts—one at San Francisco amounting to $1909.62 and the other at San Pedro amounting to $2890.79, and,

as wired you on Saturday, we shall be remitting you for this December delivery some time during the present week, the "Tigre" having arrived on the other side and we are just beginning to receive our freight money by cable from her.

This will leave outstanding January delivery for "John Bakke" only, for which you will receive check within thirty days from date of delivery.

Yours very truly,
W. L. COMYN & SONS
By W. LESLIE COMYN,
President. [68]

EXHIBIT Q

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

January 23, 1934.

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington.

Gentlemen:

This will acknowledge receipt of your letter of January 18th requesting a delivery of 800 tons of Diesel Oil to the M.S. "Nordpol" at San Pedro on January 23rd; also, your message via teletype-writer requesting delivery to the "Zaanland" on the 25th or 26th. Arrangements have been made to take care of these vessels as requested.

Please refer to your request for fuel oil for the S.S. "Zaanland" at Seattle, later changed to Portland. Considerable confusion arose in connection with this request because this office was not notified of your needs. It will aid us materially in serving you promptly if your requests for deliveries under our contract are addressed direct to the Signal Oil and Gas Company at Los Angeles.

With reference to exchange of telegraphic correspondence pertaining to the November items appearing upon your account for deliveries incidental to the contract of the Anglo Canadian Shipping Corporation, Ltd.

It is our understanding when you last visited San Francisco definite arrangement was reached that notwithstanding delayed receipts of freight moneys, you would, through your Seattle banking connection, arrange for funds to pay for the bunker fuels within thirty days of each delivery, in order that we might comply with the Code of Fair Competition for the Oil Industry, which prescribes a maximum term on bunker fuels of thirty days from the actual delivery.

In keeping with this arrangement, it is necessary that December 12, 15 and 20th items be cleared at once in order that we may be in position to serve vessels calling at delivery points for supplies.

We would be pleased to have your acknowledgment of the understanding above referred to and

also an intimation that we may expect to receive settlement in accordance therewith.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF
Manager Order & Distribution Dept.

RWM:GR
cc-
R. H. Green
R. W. Metcalf
General. [69]

EXHIBIT R

Seattle, Washington
February 6, 1934

Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Mailed you today checks $5164.10 and $2360.34 covering oil supplied John Bakke Stop Kindly instruct your Portland plant supply one hundred tons fuel oil there for Amstelland tomorrow and be advised she will complete bunkering with you at San Pedro with fuel oil not Diesel about thirteen hundred tons about February tenth or eleventh.

W. L. COMYN & SONS

Day letter
Chg Senders
WLC:M
Amstelland. [70]

EXHIBIT S

W. L. Comyn & Sons
427 Colman Bldg.

Seattle, Wash.
Feb. 7, 1934

Messrs. Signal Oil and Gas Co.,
Signal Oil Bldg.,
811 West 7th St.,
Los Angeles, California.

Dear Sirs:

We have your letter of January 23rd, contents of which are carefully noted and we shall, hereafter, keep you advised directly of our bunker requirements as promptly as we can do so. This will get over the Anglo Canadian Shipping Coy. Limited.

We have now cleared all items with you with the exception of the "Nordpol" and "Zaanland", both of which we expect to clear well prior to due dates with you.

In regard to your understanding with reference to our bank connections being willing to advance us further funds to pay your bills prior to collection of the freight on the other side, while they are willing to do this, at the same time it is going to cut down our operating credit with them and we are, therefore, desirous of discussing this matter with your people in San Francisco next week, at which time the writer expects to be there, before definitely confirming the arrangement with you.

As you know, we have been at all times prepared to secure your accounts by the assignment to you, if necessary, of collect freight through our bankers. We understand that you cannot give us the 60 days credit we were previously getting from the Texas Company without some special arrangement being made that will in some way conform to your Code and we are going to endeavor to find a way that will be satisfactory to you and that will not, in any way, cut down our operating credit with our bankers.

It really is not a very serious matter as, on practically all our vessels, we receive our funds on collect freight within 45 days after the vessels leave your port for the other side of our European service.

Yours very truly,
W. L. COMYN & SONS,
By "W. L. COMYN",
President.

Copy
TC [71]

EXHIBIT T

Copy.

February 9, 1934

W. L. Comyn & Sons,
Colman Building,
Seattle, Washington.

Gentlemen:

This will acknowledge receipt of your telegraphic order for fuel oil to be delivered to the "Amstel-

land" at Portland and San Pedro. Arrangements have been made to take care of the deliveries as requested.

This will also acknowledge receipt of your remittance in the amount of $2,360.34 and $5,164.10 in payment of our invoices, which have been receipted and are returned herewith.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF,
Manager—Order & Distribution Department.

RWM:GR
Enc.
cc-
R. H. Green
R. W. Metcalf
Jerry Krause. [72]

EXHIBIT U

Copy

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

W. L. Comyn and Sons, March 20, 1934
427 Colman Bldg.,
Seattle, Washington.

Gentlemen:

We wish to call your attention to the fact that we have not received your remittance for February de-

liveries of fuel oil and would appreciate your advice in this matter.

We would especially like to receive your check for deliveries to S.S. "Amstelland" February 2nd and 7th at this time, and would like to have your check for all February items by April 1.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By J. H. ROUNSAVELL,
Asst. Secretary. [73]

EXHIBIT V

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

March 24, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

We have your letter of the 20th, and in reply thereto, would say we shall remit you for all February items prior to April 1st.

For your information, the "Amstelland" is now discharging and we expect to receive the balance of

her freight not later than March 28th or 29th and prompt remittance will be made to you.

Yours very truly,
W. L. COMYN & SONS
By W. LESLIE COMYN,
President by M.

WLC:M [74]

EXHIBIT W

March 30, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California
Dear Sirs:

Enclosed, herewith, please find check in the amount of $10,918.63 covering your February accounts.

Yours very truly,
W. L. COMYN & SONS
By
President.

WLC:M
encl.

(It is stipulated in explanation of the foregoing Ex. W that check in the sum of $10,918.63 covered the purchase price of oil supplied to the vessel Amstelland on four different dates.) [75]

EXHIBIT X

April 10th, 1934

Messrs. Signal Oil & Gas Company,
Signal Oil Bldg.,
Los Angeles, Calif.

Dear Sirs:

M.S. "Nordhval"

We are in receipt of invoice billed by you to Messrs. Anglo Canadian Shipping Co., copy of which is attached.

Please be advised that this account should be billed to W. L. Comyn & Sons and not to the Anglo Canadian Shipping Co., Ltd. We would be much obliged if you would amend your records accordingly, advising us that you have done so.

Yours very truly,
W. L. COMYN & SONS
By

RAK:MW
enc. [76]

EXHIBIT Y

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

April 20, 1934

W. L. Comyn and Sons,
427 Colman Bldg.;
Seattle, Washington.

Gentlemen.

Our records show an unpaid item on your account in the amount of $1,615.81 for fuel delivery to your "Nyhorn" at San Pedro on February 17th. Will you please check this item and, if payment has not been made, mail your remittance to us at once?

We have your letter of April 10th regarding invoice on delivery to M.S. "Nordhval" and have charged this invoice to your account instead of to Anglo-Canadian Shipping Co., Ltd. Our billing department has instructions to keep your account separate and it is unlikely that a similar error will be made in the future.

Very truly yours.
SIGNAL OIL AND GAS COMPANY
By G. F. KRAUSE. [77]

EXHIBIT Z'

April 24th, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, Calif.

Dear Sirs:

We have your favor of April 20th and in return enclose herewith check for $1615.81 for fuel delivered to M.S. "Nyhorn".

We had scheduled this account for payment at the same time that the later delivery was to be paid. However, we are pleased to enclose our check as noted.

Please be advised that checks will be mailed covering March accounts in the next few days.

We also note that you have amended the billing of the oil delivered to M.S. "Nordhval" from the Anglo Canadian Shipping Co., Ltd. to our account.

Yours very truly,
W. L. COMYN & SONS
By

RAK:MW
encl. [78]

EXHIBIT A-1

April 30, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

Enclosed, herewith, please find check #5186 in the sum of $5121.91 to cover your invoice F-1619 and our check #5187 in the sum of $3610.09 to cover your invoice F-1640.

This covers payment of all your March items.

Yours very truly,
W. L. COMYN & SONS
By
President.

WLC:M
encl.

(It is stipulated in explanation of the foregoing Ex. A-1 that check in the sum of $5121.91 covered the purchase price of oil supplied to the MS "Nyhorn", and check in the sum of $3610.09 covered the purchase price of oil supplied to the MS "Stjerneborg".) [79]

EXHIBIT B-1

Jan. 2, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California.

Dear Sir:

The motorship "John Bakke" will be in Los Angeles about January 10th on her way Home and

we hereby request that you please supply 850 tons of diesel oil to her of the same grade as you supplied to her her northbound, namely 24 plus.

If you will keep in touch with Messrs. Swayne & Hoyt, who will be acting as vessel's agents at Los Angeles, they will keep you advised as to the time and place they will require bunkers to be supplied.

Yours very truly,
W. L. COMYN & SONS
By Secretary

JGC:M
c/c—Messrs. Swayne & Hoyt, Ltd.
Chamber of Commerce Building
Los Angeles, California [80]

EXHIBIT C-1

W. L. Comyn & Sons
427 Colman Bldg.
Seattle, Wash.

January 18, 1934.

Signal Oil Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

The M/S "Nordpol" is due in San Pedro about January 23d, and as this vessel is at present on our charter, we would appreciate if you would supply to her 800 tons of Diesel Oil. If you will keep in touch with Messrs. Howard Hartry they will be able

to advise you the exact time and place they require the oil to be supplied to the vessel.

Yours very truly,

W. L. COMYN & SONS

By J. G. COMYN

JGC:L [81]

EXHIBIT D-1

January 22, 1934.

Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California

Dear Sirs:

The S/S "Zaanland" which is now on our Time Charter is due in Los Angeles January 26th, and we hereby request that you please supply to this vessel between 1500 and 1600 tons of Fuel Oil .95, specific gravity at 15° C.

Messrs. Swayne & Hoyt will be the agents for the vessel and if you will keep in touch with them they will advise as to the time and place they would like to have delivery.

Yours very truly,

W. L. COMYN & SONS

By

JGC:L [82]

EXHIBIT E-1

Seattle, Washington
February 6, 1934

Signal Oil & Gas Company
Signal Oil Building
Los Angeles California

Mailed You Today Checks $5164.10 and $2360.34 Covering Oil Supplied John Bakke Stop Kindly Instruct Your Portland Plant Supply One Hundred Tons Fuel Oil There for Amstelland Tomorrow and Be Advised She Will Complete Bunkering With You at San Pedro With Fuel Oil Not Diesel About Thirteen Hundred Tons About February Tenth or Eleventh.

W. L. COMYN & SONS

Day letter
Chg Senders
WLC:M
Amstelland [83]

EXHIBIT F-1

February 8, 1934

Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California

Dear Sirs:

The S/S "Amstelland" now on our charter is due in San Pedro for bunkers Tuesday AM—February the 13th, and we hereby request that you please sup-

ply about 1300 tons of Fuel Oil by barge to the above vessel.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, will be agent for the vessel and if you will keep in touch with him, he will advise the exact time the vessel will require the barge to be alongside.

Will you please supply the oil at an approximate grade of .95, specific gravity at 15° C.

Yours very truly,

W. L. COMYN & SONS

By

Secretary

JGC:L

CC—Mr. Howard Hartry
625 Beacon St.
San Pedro, California. [84]

EXHIBIT G-1

Signal Oil and Gas Company
811 West Seventh Street
Los Angeles

February 9, 1934

W. L. Comyn & Sons,
Colman Building,
Seattle, Washington.

Gentlemen:

This will acknowledge receipt of your telegraphic order for fuel oil to be delivered to the "Amstel-

land" at Portland and San Pedro. Arrangements have been made to take care of the deliveries as requested.

This will also acknowledge receipt of your remittance in the amount of $2,360.34 and $5,164.10 in payment of our invoices, which have been receipted and are returned herewith.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF
Manager—Order & Distribution Department.

RWM:GR
Enc. [85]

EXHIBIT H-1

Seattle, Washington
Feb. 14, 1934

Signal Oil and Gas Company
Signal Oil Building
Los Angeles California

Nyhorn Due San Pedro Midnight Friday Please Supply Two Hundred Fifty Tons Dieseloil.

W. L. COMYN & SONS

Straight Wire
Chg Senders
JGC:M
Nyhorn 5 [86]

EXHIBIT I-1

February 14, 1934

Air Mail
Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California
Dear Sirs:

M/S "Nyhorn".

We beg to confirm our today's telegram requesting you to supply bunkers for the above vessel.

We received a Radio from her this morning and as she has not enough bunkers aboard to bring her to Vancouver, she has to stop at San Pedro—northbound.. We telegraphed you in order that you would have sufficient notice to prepare for her.

We hereby request that you please supply 250 tons of diesel oil by barge to the vessel upon her arrival at San Pedro.

The Captain advised in his Radio that he would arrive in San Pedro, midnight—Friday, February 16th. Mr. Howard Hartry will be looking after the vessel and no doubt he will be in touch with you as to the exact time the oil barge will be required.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [87]

EXHIBIT J-1

February 26, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Nyhorn"

The M/S "Nyhorn" is expected to arrive in Los Angeles Wednesday, March the 7th, and we hereby request that you supply to the above vessel 725 tons of diesel oil—same quality and grade as you supplied for this vessel northbound.

Messrs. Swayne & Hoyt will be Agents for the vessel and they will advise you as to the place and time they will require oil barge brought alongside.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [88]

EXHIBIT K-1

March 6, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

The M/S "Stjerneborg" now on our charter is loading at Portland, Oregon for China and we re-

quire for this vessel, 450 tons of diesel oil under our contract with you. It will be necessary that this oil be supplied at Portland as the vessel is not coming to San Pedro and we would greatly appreciate your advising your agents at Portland to supply approximately 450 tons about March the 12th. We are requesting your Portland agents to supply 450 tons of bunkers for this vessel and would appreciate your confirming that this purchase is entirely in order.

Thanking you very much, we beg to remain

Yours very truly,

W. L. COMYN & SONS

By

Secretary

JGC:L [89]

EXHIBIT L-1

March 19, 1934.

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M. S. "Nordhval"

We have received radio advice from this vessel that she is due in Los Angeles on March 25th

She is on her way northbound to load a cargo for Europe under our charter and she will require 150 tons of Diesel oil which please supply under our contract with you.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, will be acting as Agent for the vessel and, if you will keep in touch with him, he will be able to advise you as to just what time oil barge will be required.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:M
C/C—Mr. Howard Hartry
625 Beacon Street
San Pedro, California. [90]

EXHIBIT M-1

Signal Oil and Gas Company
General Offices 727 West Seventh Street
New Address
811 West Seventh Street
Los Angeles

March 22, 1934

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of March 19, 1934 advising that the M. S. "Nordhval" will be in Los Angeles on March 25th and will require 150 tons of Diesel oil.

Arrangements have been made to supply this steamer with the required amount of oil.

Yours very truly,

SIGNAL OIL AND GAS COMPANY

By RAY W. METCALF

Order & Distribution Dept.

GR [91]

EXHIBIT N-1

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Brand"

The M/S "Brand" is due in Los Angeles about May 9th and we hereby request that you please supply 625 tons of Diesel Oil to the above vessel.

Messrs. Swayne & Hoyt Ltd. will be acting as Agents and if you will keep in touch with them they will be able to advise as to the time and place they will require the oil barge to be put along side.

Thanking you for your attention in this matter, we beg to remain,

Yours very truly,

W. L. COMYN & SONS

JGC:L [92]

By

Secretary.

EXHIBIT O-1

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Stjerneborg"

The M/S "Stjerneborg" which is at present on our time charter will be loading a cargo of lumber to China and Japan about the middle of May at Grays Harbor. In our Oil Contract with you there is no price stipulated for bunkers at Aberdeen, although the Standard Oil Company have an Oil Dock at this port.

As near as we can calculate at the present time, the vessel will probably need in the neighborhood of from 400 to 500 tons of Diesel Oil, and under our present contract with you the price of Diesel Oil at either Willbridge, Oregon or Point Wells, Washington, is $1.05 a barrel and we presume that the same rate will apply to Aberdeen as applies to Willbridge and Point Wells.

Please advise shortly that it will be in order to bunker the Stjerneborg at Aberdeen.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [93]

EXHIBIT P-1

Seattle Washington
May 5, 1934

Signal Oil & Gas Company
Signal Oil Building
Los Angeles California

Have Just Chartered Sunnanvik Due Los Angeles Monday Morning Will Require Bunkers at That Time Will Advise Quantity Later Today

W. L. COMYN & SONS

Rush Wire
C G Senders
JGC:M
Sunnanvik [94]

EXHIBIT Q-1

May 21, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles
California

Dear Sirs:

The M/S "Nordpol" is due in San Pedro about May the 30th and we hereby request that you please supply about 200 tons of Diesel Oil under our Contract with you.

The Agent for the vessel will be Mr. Howard Hartry, 625 Beacon Street, San Pedro, California,

and we will have him keep you advised as to the time the vessel is due.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L
cc—Mr. Howard Hartry
625 Beacon Street
San Pedro, California. [95]

EXHIBIT R-1

May 29, 1934

Messrs. Signal Oil & Gas Company,
Signal Oil Building,
Los Angeles, California.

Dear Sirs:

We beg to confirm telegram sent you today requesting 100 tons of Diesel Oil to be supplied to the "Samuel Bakke".

This vessel is due tomorrow evening at 5:00 PM. but she has cargo on board to discharge at Long Beach and no doubt Messrs. Swayne & Hoyt Ltd. will require the oil barge to be put alongside while she is discharging her cargo there.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L [96]

EXHIBIT S-1

June 5, 1934

Messrs. Signal Oil & Gas Co.,
Signal Oil Building
Los Angeles, California

Dear Sirs:

The M/S "Belpamela" is due in San Pedro on June 8th or 9th and we hereby request that you please supply 325 tons of Diesel Oil under our contract with you to the above mentioned vessel.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, California, will act as Agent on our behalf and if you will get in touch with him, he will be able to keep you posted as to the time of arrival of the vessel.

Yours very truly,
W. L. COMYN & SONS
By

Secretary

JGC:L
cc—Mr. Howard Hartry
625 Beacon Street
San Pedro, California [9

EXHIBIT T-1

Signal Oil and Gas Company
General Offices, Signal Oil Building
811 West Seventh Street
Los Angeles

June 11, 1934

W. L. Comyn & Sons,
427 Colman Building
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of June 5, 1934 requesting that we supply the M/S "Belpamela" with 325 tons of Diesel Oil when she docked in San Pedro on June 8th or 9th.

Please be advised that this vessel was supplied as requested.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By RAY W. METCALF
(Roth)
Order and Distribution Dept.

GR [98]

EXHIBIT U-1

June 11, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles
California

Dear Sirs:

The M/S "Aurora" is due in San Pedro about June 22nd and we hereby request that you please supply this vessel with bunkers under our contract with you.

Mr. Howard Hartry, 625 Beacon Street, San Pedro, California, will be our agent for the vessel, and if you will keep in touch with him he will let you know the exact time the vessel is due.

At the present time of writing we do not know the quantity of bunkers we will require but we are radioing the Master of the vessel and as soon as we hear from him we will let you know at once the quantity of bunkers we will require.

Yours very truly,
W. L. COMYN & SONS
By
Secretary

JGC:L
cc—Mr. Howard Hartry
625 Beacon Street
San Pedro, California [99]

TRIPLICATE

No. 16430

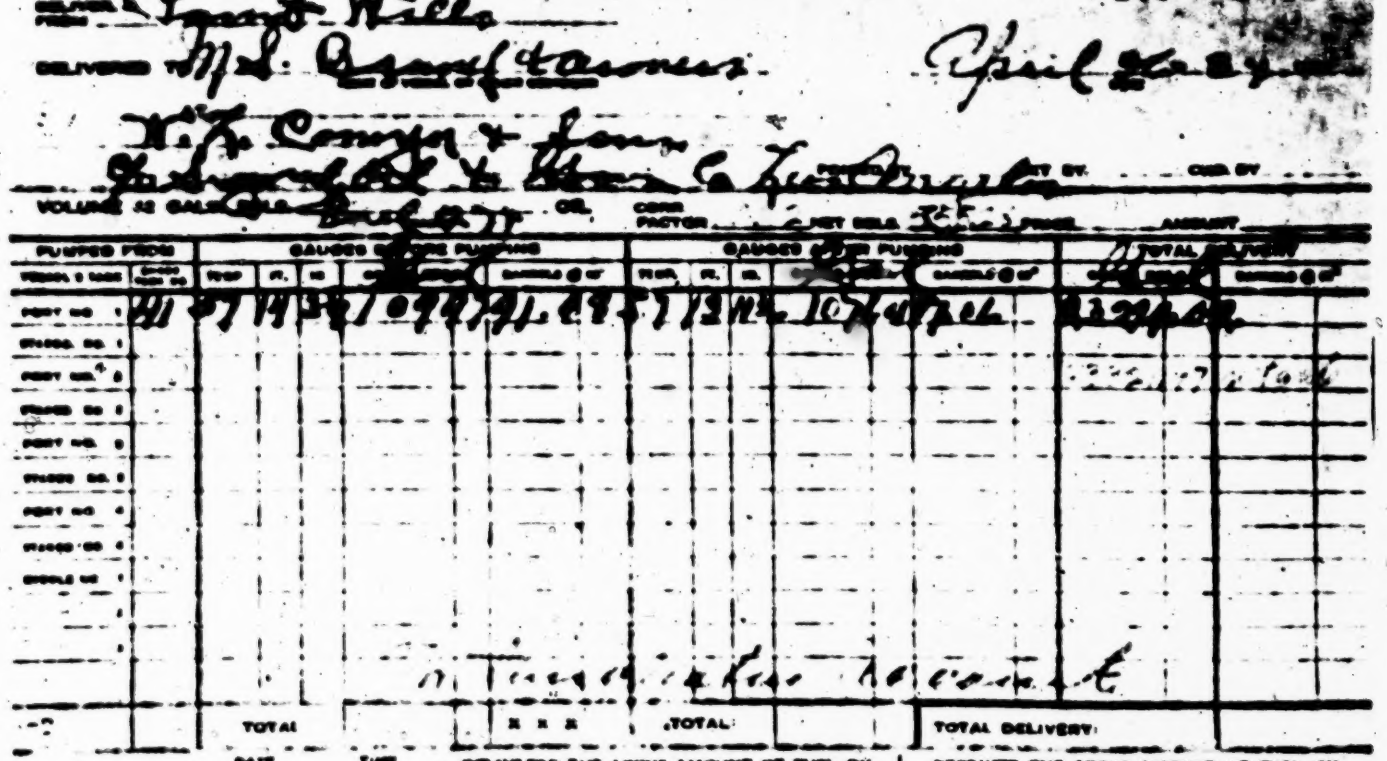

EXHIBIT A-2

100

100

EXHIBIT B-2

Quadruplicate
Signal Oil and Gas Company DA-5
Petroleum and Its Products
General Offices
811 West Seventh Street
Los Angeles, Calif.

MS Brand and Owners
C/o W. L. Comyn and Sons
427 Colman Bldg.
Seattle, Washington.

Invoice No. F-1750
Invoice Date April 26, 1934
Vendor's No. 2755
Date shipped April 26, 1934
Shipped to MS Brand and Owners
Destination at Point Wells, Wash.
Shipped via Line
Shipped from Point Wells, Wash.
Prepaid or collect
Customer's order No.
F.O.B.
Car No.—
Ticket No.—16430
Commodity—Fuel Oil, 27 Plus
Gross Gallons—
Gross Barrels—23,294.02
Grav.—
Temp.—57
Corr. Factor—1.0012

Net Shipment
Gallons—23,321.97
Barrels—555.28
Price—$1.15
Amount—$638.57 [101]

EXHIBIT C-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S Brand

The M/S "Brand" is due in Los Angeles about May 9th and we hereby request that you please supply 625 tons of Diesel Oil to the above vessel.

Messrs. Swayne & Hoyt, Ltd., will be acting as Agents and if you will keep in touch with them they will be able to advise as to the time and place they will require the oil barge to be put along side.

Thanking you for your attention in this matter, we beg to remain,

Yours very truly,
W. L. COMYN & SONS
By J. G. COMYN
Secretary.

JGC:L
cc—Messrs. Swayne & Hoyt Ltd.,
Chamber of Commerce Building
Los Angeles, California. [102]

EXHIBIT D-2

May 7, 1934

W. L. Comyn & Sons,
427 Colman Building,
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of May 1, 1934 requesting that we supply the M/S Brand, due in Los Angeles about May 9th, with six hundred twenty-five tons of Diesel Oil.

Arrangements have been made to comply with this request.

Yours very truly,
SIGNAL OIL AND GAS COMPANY
By .....
Order & Distribution Dept.

[103]

DUPLICATE COPY

RECEIPT FOR FUEL OIL DELIVERED—S. 800-F

[redacted] Oil Company of California

101

No 15648

DELIVERED TO [redacted] AND [redacted] SAN PEDRO CA. [illegible] 1942

AT [redacted] Signal Hill

Signal Contracting for Signal Oil

San Leo

order 776
P-974

PRICED BY _____ EXT. _____ CKD. BY _____

VOLUME 6 GALS. BBLS. [illegible] OIL CORR. FACTOR _____ NET BBLS. _____ PRICE _____ AMOUNT _____

PURCHASED FROM		GAUGES BEFORE PUMPING					GAUGES AFTER PUMPING					TOTAL DELIVERY	
VESSEL'S NAME	DATE NOM. TK.	TEMP.	FT.	IN.	GROSS BBLS.	BARRELS @ 60°	TEMP.	FT.	IN.	GROSS BBLS.	BARRELS @ 60°	GROSS BBLS.	BARRELS @ 60°
[illegible]		[illegible]											
[illegible]													
[illegible]													
[illegible]	

EXHIBIT G-2

Signal Oil and Gas Company DA-5
Petroleum and Its Products
General Offices
811 West Seventh Street
Los Angeles, Calif.

MS Brand and Owners
C/o W. L. Comyn and Sons
427 Colman Bldg.
Seattle, Washington
Invoice No. F-1798
Invoice Date May 11, 1934
Vendor's No. 18540
Date Shipped May 11, 1934
Shipped to MS Brand and Owners
Destination at Berth 166, San Pedro
Shipped via Barge #7
Shipped from El Segundo, Calif.
Prepaid or collect
Customer's Order No.
F.O.B.
Car No.—
Ticket No.—15648
Commodity—Fuel Oil, 27 Plus
Gross Gallons—
Gross Barrels—4,619.74
Grav.
Temp.—80
Corr. Factor—.9921

Net Shipment	
Gallons—	
Barrels—4,583.24	
Price—85¢	
Amount—	$3895.75
Plus: 2½% State Retail Sales Tax	97.39
	$3993.14

[105]

EXHIBIT H-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

May 1, 1934

Messrs. Signal Oil & Gas Company
Signal Oil Building
Los Angeles, California

Dear Sirs:

M/S "Stjerneborg"

The M/S "Stjerneborg" which is at present on our time charter will be loading a cargo of lumber to China and Japan about the middle of May at Grays Harbor. In our oil contract with you there is no price stipulated for bunkers at Aberdeen.

although the Standard Oil Company have an oil dock at this port.

As near as we can calculate at the present time, the vessel will probably need in the neighborhood of from 400 to 500 tons of Diesel oil, and under our present contract with you the price of Diesel Oil at either Willbridge, Oregon, or Point Wells, Washington, is $1.05 a barrel and we presume that the same rate will apply to Aberdeen as applies to Willbridge and Point Wells.

Please advise shortly that if will be in order to bunker the Stjerneborg at Aberdeen.

Yours very truly,

W. L. COMYN & SONS

By J. G. COMYN,

Secretary. [106]

EXHIBIT I-2

Los Angeles, California
5/7/34

Day Letter
W. L. Comyn & Sons
427 Coleman Bldg.
Seattle, Wash.

Reference Your Letter Regarding SS Stjerneborg Our Diesel Storage Aberdeen Very Limited and Unable Load Your Vessel at This Point Stop Can

You Arrange Load at Astoria Point Wells or Willbridge.

SIGNAL OIL AND GAS COMPANY

Chg. to
Signal Oil and Gas Co.,
811 West 7th St., Los Angeles
cc—
Telegram File
Mr. Metcalf [107]

EXHIBIT J-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

May 7, 1934.

Messrs. Signal Oil & Gas Co.
Signal Oil Building
Los Angeles, California

Dear Sirs:

This will acknowledge receipt of your telegram of today's date in reply to our letter of May the 1st regarding the bunkering of the M/S "Stjerneborg" at Aberdeen.

In view of your telegram we will bunker the vessel at Astoria.

We will let you know the quantity and the expected date we will require the bunkers at Astoria at the earliest possible moment.

Yours very truly,
W. L. COMYN & SONS
By J. G. COMYN
Secretary. [108]

EXHIBIT K-2

S79 15-M Seattle Wash 14 1200 P

1934 May 14 PM 12 19

Signal Oil & Gas Company
Signal Oil Bldg.

Stjerneborg Due Astoria Late Tonight Please Arrange Supply Five Hundred Twenty Five Tons Diesel Oil

W L COMYN & SONS [109]

EXHIBIT L-2

May 14, 1934

W. L. Comyn & Sons
427 Colman Building,
Seattle, Washington

Gentlemen:

This will acknowledge receipt of your letter of May 7th and your wire of May 14th relative to the M/S "Stjerneborg" which will be at Astoria as of

this date to pick up five hundred twenty five tons of Diesel Oil.

We have made arrangements to care for the above requirements as requested.

Yours very truly,

SIGNAL OIL AND GAS COMPANY

By R. N. M.

Order & Distribution Dept.

GR

cc—

R. H. Green

R. W. Metcalf

G. Krause [110]

TRIPLICATE
OFFICE COPY

RECEIPT FOR FUEL OIL DELIVERED ALONGSIDE

PORT No. 1

DELIVERED FROM Astoria Ore

DELIVERED [redacted] Motorship Stjernsborg Owners S.A.

To Signal Oil & Gas Co.
Wilmington
Los Angeles Cal.

733

PASSED BY _____ ENT. BY _____

VOLUME 42 GALS. BBLS. [redacted] OIL GRAVITY FACTOR .9996 NET BBLS. 3640.52 FEET _____ INCHES _____

PUMPED FROM		GAUGES BEFORE PUMPING					GAUGES AFTER PUMPING					TOTAL DELIVERED	
VESSEL'S TANKS	GRADE OF FUEL OIL	TEMP.	FT.	IN.	GAUGES	BARRELS @ 60°	TEMP.	FT.	IN.	GAUGES	BARRELS @ 60°	GALLONS	BARRELS @ 60°
PORT NO. 1													
STARBD. NO. 1	2	44°	37	7/8	2307		44°	5	7/8	2543		10636	
PORT NO. 2													
STARBD. NO. 2												36402	866.7
PORT NO. 3													
STARBD. NO. 3													
PORT NO. 4													
STARBD. NO. 4													
SLOP TANK NO. 1													
" 2													
" 3													
		TOTAL				X X X	TOTAL					TOTAL DELIVERED	

DATE	TIME
10-15	6 P.M.
11-55	6 A.M.
	M.

DELIVERED THE ABOVE AMOUNT OF FUEL OIL AS WITNESSED BY MASTER'S SIGNAL

W Humphrell
FOR CHIEF ENGR. OR MASTER

RECEIVED THE ABOVE AMOUNT OF FUEL OIL AS INDICATED BY MASTER'S SIGNAL

[redacted]
MASTER OR CHIEF ENGINEER

SOCO 1 [illegible] SHIP TO [illegible]

ARMED PURSERS _____ FUEL _____ AMPL _____

ISSUE NO. 2
411

411

EXHIBIT N-2

Triplicate

Signal Oil and Gas Company DA-5
Petroleum and Its Products
General Offices
811 West Seventh Street
Los Angeles, Calif.

MS Stjerneborg and Owners
c/o W. L. Comyn and Sons
427 Colman Bldg.
Seattle, Washington.

Invoice No. F-1813
Invoice Date May 15, 1934
Vendor's No. 733
Date shipped May 15, 1934
Shipped to MS Stjerneborg & Owners
Destination at Astoria, Oregon
Shipped via Line
Shipped from Astoria, Oregon
Prepaid or collect
Customer's order No.
F. O. B.
Car No.—
Ticket No.—17884
Commodity—Fuel Oil 27 Plus
Gross Gallons—
Gross Barrels—3,643.98
Grav.—
Temp.—61
Corr. Factor—.9996

Net Shipment
Gallons—
Barrels—3,642.52
Price—$1.05
Amount—$3,824.65 [112]

EXHIBIT O-2

General Steamship Corporation
Chartering Department
240 Battery Street
San Francisco, California, U. S. A.
Branch Offices
Los Angeles, Calif.-Portland, Ore.-Seattle, Wash.

TIME CHARTER
Government Form
Approved by the New York
Produce Exchange.
Cable Address
"Gensteamco"

Codes All Codes Private Codes
General Steamship Corporation
Seattle, Washington
Chartering Department
Ship Brokers

This Charter Party made and concluded upon in the City of Seattle, Washington, March 8th, 1934. Between West Indian Trading Company, Copenhagen, Denmark, Time-charter. Owners of the good steel screw Motorship Brand of Porsgrund, Nor-

way of 4819 tons gross register, and 2829 tons net register, having engines of 534 nominal horse power and with hull, machinery and equipment in a thoroughly efficient state, and classed highest at Norske Veritas of about 515,850 cubic feet grain capacity, and 8880 tons dead weight capacity (cargo and bunkers, including stores not exceeding fifty tons) on Lloyd's Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about 1300 tons of coal, speed about 10/10½ knots on about 9 tons diesel oil per day, now trading, and W. L. Comyn & Sons Charterers of the City of Seattle, Washington.

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said Steamship from the time of delivery, for one trip, duration about sixty (60) days. Trading within Institute Warranties Limits, copy attached hereto. Charterers to have liberty to sublet the Steamer for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Steamer to be placed at the disposal of the Charterers, at a United States West Coast or British Columbia port in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being on her delivery ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches with capacity and power to run all the

winches at one and the same time (and with full complement of officers, sea-men, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, but excluding asphalt in bulk, pitch in bulk, heavy ore, injurious cargo and explosives, in such lawful trades, between safe port and/or ports in British North America, and/or United States of America, and/or West Indies, and/or Central America, and/or Carribean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America, excluding River St. Lawrence from October 1st to May 1st, White Sea, Black Sea and the Baltic out of season, Magdalena River, and all unsafe ports; as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and Consular, shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her class and keep the steamer in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the Coals except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Captain, Officers or Crew), and all other usual expenses except those before stated, but when the vessel puts

into a port for causes for which steamer is responsible, then all such charges incurred shall be paid by owners.

Charterers are to provide necessary dunnage and shifting boards, but Owners to allow them the use of the dunnage and shifting boards already aboard Steamer. Charterers to have the privilege of using shifting boards for dunnage, they making good for any damage thereto.

3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal left in the Bunkers at Ninety Cents (90¢) U. S. Currency per barrel at the respective places where she is delivered to them.

4. That the Charterers shall pay for the use and hire of the said Vessel Six Shillings and One and One Half Pence (6/1½) British Sterling per deadweight ton as above per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month, hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port in United Kingdom or Continent, Bordeaux/Hamburg range.

5. Payment of said hire to be made in Seattle in cash at the current short sight rate of Exchange, or in approved Bankers sight bills on London, at Owners' option, semi-monthly in advance, and for the last half month or part of same the approximate

amount of hire, and shoud same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or any breach of the Charter Party as herein specified, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers in pursuance of this charter. Delivery to count from 7 a. m. on the working day following that on which written notice has been given before 4 p. m., but if required by Charterers, loading to commence at once, such time used to count as hire.

6. That the cargo or cargoes be laden and or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, provided the Steamer can always safely lie afloat at any time of tide, except at such places where it is customary for similar size steamers to safely lie aground.

7. That the whole reach of the Vessel's Holds, Decks, and usual places of loading and accommodations of the Ship (not more than she can reasonably stow and carry), shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with Ship's crew and boats. The

Captain, (although appointed by the Owners), shall be under the orders and direction of the Charterers as regards employment or agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mates' or Tally Clerks' receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the steamer and see that voyages are prosecuted with the utmost despatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table. Provided Charterers do not use the Supercargo privilege, owners to victual Pilots, Tally Clerks, Stevedore's Foreman, Customs Officers, etc., as customary, free, but if Supercargo privilege is used, Charterers to pay victualing of Pilots, Tally Clerks, etc., at the rate of 25¢ per meal.

11. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or Agents, and to furnish the Charter-

ers, their Agents or Supercargo, when required, a true daily copy of Logs, showing the course of steamer and distance run and the consumption of coal.

12. That the Master shall use diligence in caring for the ventilation of the cargo.

13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 300 tons.

14. That if required by Charterers, time not to commence before April 15, 1934 and should Steamer not be ready for delivery on or before April 25, 1934 Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of Steamer's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost, and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra coal consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the

Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at Seattle, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, and the Charterers to have a lien on the Ship for all moneys paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crews proportion. General average, if any, to be according to York-Antwerp Rules, 1924.

If the Owners of the ship shall have exercised due diligence to make said ship in all respects seaworthy, and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the

pilot, master or crew, in the navigation or management of the ship; or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the Consignees or Owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the Shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger, damage or disaster had not resulted from such fault, negligence, latent or other defect, or unseaworthiness.

20. Coals used by steamer while off hire, also for cooking, condensing water for crew's use, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the Steamer may be from time to time employed in tropical waters during the term of this Charter, Steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service. Fumigation when necessary for Charterer's account. All taxes that may be levied by any Government other than that of the Owner's domicile or the Ship's *glad* in respect to the earnings of the vessel while under this charter are for account of Charterers.

22. Owners shall provide gear (for all derricks) capable of handling lifts up to three tons, and maintain the gear of the ship as fitted, also provide ropes, falls, slings and blocks; but gear for heavier lifts shall be for Charterers' account. Owners also to provide lanterns and oil for nightwork, and steamer to give use of electric light, when so fitted. The Charterers to have the use of any gear on board the steamer.

23. Steamer to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch, men to work same day and night, as required, Charterers agreeing to pay winchmen, and crew including officers for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of short steam, or a disabled winch, or winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc.," and also subject to the rules governing the Steamship Trade of the New York Produce Exchange.

25. Nothing herein stated is to be construed as a demise of the Steamer to the Time Charterers. The Owners to remain responsible for the navigation of the Steamer, insurance, crew, and all other matters, same as when trading for their own account.

26. A commission of Two and One Half (2½%) per cent, upon the gross amount of this Charter, payable by the Steamship and Owners due to General Steamship Corporation, for division with Joh. Bruhn, Copenhagen upon the signing hereof, Steamship lost or not lost, and also upon any continuation or extension of this Charter or on sale of Vessel.

27. An address commission of 2 per cent. payable to W. L. Comyn & Sons.

28. Penalty for non-performance of this Contract, estimated amount of damages.

29. Wherever the word "Coal" may apper in this charter party it shall be understood to mean "Diesel Oil Fuel", and wherever the word "Steamer" may appear, it shall be understood to mean "Motorship".

30. Charterers privilege bunkering for their account at San Pedro northbound enroute to vessels port of delivery on their time and expense. If Charterers exercise this option, canceling date is extended to April 26, 1934, and if required Charterers are to supply bunker oil, at Ninety Cents (90¢) per barrel, sufficient to bring vessel to port of delivery.

31. Charterers have the option of carrying up to

3,500 tons of lead concentrates and/or zinc concentrates.

WEST INDIAN TRADING
COMPANY,
Copenhagen
Time-Charter-Owners of the
Norwegian Motorship
"Brand"
By GENERAL STEAMSHIP
CORPN. LTD.,
As Agents
By H. A. JEANS,
Chartering Department.
By Telegraphic authority received from Joh Bruhn,
Copenhagen.
W. L. COMYN & SONS
By W. L. COMYN,
President

Witness to both signatures
J. G. COMYN

The original Charter Party in our possession.
GENERAL STEAMSHIP CORP.,
701 Fourth Ave.,
Seattle, Wash.,
Brokers. [113]

EXHIBIT P-2

General Steamship Corporation
Chartering Department
240 Battery Street.
San Francisco, California, U. S. A.
Branch Offices
Los Angeles, Calif.-Portland, Ore.-Seattle, Wash.

TIME CHARTER
Government Form
Approved by the New York
Produce Exchange.
Cable Address
"Gensteamco"
Codes All Codes Private Codes

This Charter Party made and concluded upon in the City of Seattle, Washington, January 27th, 1934 between Dampskibsselsk Danneborg (C. K. Hansen, Mgr.) owners of the good single Screw Motorship Stjerneborg of Copenhagen, Denmark, of 4532 tons gross register, and 2772 tons net register, having engines of 541 nominal horse power and with hull, machinery and equipment in a thoroughly efficient state, and classed +100 A 1 at Lloyds of about 486,000 cubic feet grain capacity, and 8475 tons dead weight capacity (cargo and bunkers, including stores not exceeding fifty tons) on Lloyd's Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about 1000 tons of coal, speed about 11½ knots on about 8½ to 9 tons of diesel oil

per day, now trading and W. L. Comyn & Sons, Charterers of the City of Seattle, Washington.

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said Steamship from the time of delivery, for about five to seven months Trading within Institute Warranties Limits, copy attached hereto. If vessel enters a war zone and owners consider it necessary to cover eventual war risk, same to be for charterer's account on owner's valuation of two million (2,000,000) Danish Kroner. Charterers to have liberty to sublet the Steamer for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Steamer to be placed at the disposal of the Charterers, at a United States West Coast or British Columbia port in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being on her delivery ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches with capacity and power to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed in carrying lawful merchandise, including petroleum or its products, but excluding asphalt in bulk, pitch in bulk, heavy ore and injurious cargo, in such lawful trades, between safe port and/or ports in British North America, and/or United States of America,

and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America and/or Europe, and/or Africa, and/or Asia, and/or Australia, excluding River St. Lawrence from October 1st to May 1st, White Sea, Black Sea and the Baltic out of season, Magdalena River, and all unsafe ports: as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and Consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her class and keep the steamer in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the Coals except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Captain, Officers or Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which steamer is responsible, then all such charges incurred shall be paid by owners.

Charterers are to provide necessary dunnage and shifting boards, but Owners to allow them the use of the dunnage and shifting boards already aboard Steamer. Charterers to have the privilege of using

shifting boards for dunnage, they making good for any damage thereto.

3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers and the Owners shall, on expiration of this Charter Party, pay for all Coal left in the Bunkers at Ninety Cents (90¢) U. S. Currency per barrel.

4. That the Charterers shall pay for the use and hire of the said Vessel, Three Shillings and Nine Pence (3/9) British Sterling per deadweight ton as above per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at a safe port in Australia or China or Japan.

5. Payment of said hire to be made in Seattle in cash at the current short sight rate of Exchange, or in approved Bankers' sight bills on London, at Owners' option, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or any breach of the Charter Party as herein specified, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without preju-

dice to any claim they (the Owners) may otherwise have on the Charterers in pursuance of this Charter. Delivery to count from 7 a. m. on the working day following that on which written notice has been given before 4 p. m., but if required by Charterers, loading to commence at once, such time used to count as hire.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, provided the Steamer can always safely lie afloat at any time of tide, except at such places where it is customary for similar size steamers to safely lie aground.

7. That the whole reach of the Vessel's Holds, Decks, and usual places of loading and accommodations of the Ship (not more than she can reasonably stow and carry), shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with Ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and direction of the Charterers as regards employment or agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mates' or Tally Clerks' receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the steamer and see that voyages are prosecuted with the utmost despatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table. Provided Charterers do not use the Supercargo privilege, owners to victual Pilots, Tally Clerks, Stevedore's Foreman, Customs Officers, etc., as customary, free, but if Supercargo privilege is used, Charterers to pay victualing of Pilots, Tally Clerks, etc., at the rate of 25¢ per meal.

11. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or Agents, and to furnish the Charterers, their Agents or Supercargo, when required, a true daily copy of Logs, showing the course of steamer and distance run and the consumption of coal.

12. That the Master shall use diligence in caring for the ventilation of the cargo.

13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 400 tons.

14. That if required by Charterers, time not to commence before March 1st, 1934 and should Steamer not be ready for delivery on or before March 25th, 1934 Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of Steamer's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra coal consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at Seattle, one to be

appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, and the Charterers to have a lien on the Ship for all moneys paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General average, if any, to be according to York-Antwerp Rules, 1924.

If the Owners of the ship shall have exercised due diligence to make said ship in all respects seaworthy, and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or negligence of the pilot, master or crew, in the navigation or management of the ship, or from latent or other defects, or unseaworthiness of the ship, whether existing at time of shipment or at the beginning of the voyage, but not discoverable by due diligence, the Consignees or Owners of the cargo shall not be exempted from liability for contribution in General Average, or for any special charges incurred, but with the Shipowner, shall contribute in General Average, and shall pay such special charges, as if such danger,

damage, or disaster had not resulted from such fault, negligence, latent or other defect, or unseaworthiness.

20. Coals used by steamer while off hire, also for cooking, condensing water for crew's use, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the Steamer may be from time to time employed in tropical waters during the term of this Charter, Steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

Fumigation when necessary for Charterer's account. All taxes that may be levied by any Government other than that of the Owner's domicile or the Ship's flag in respect to the earnings of the vessel while under this Charter are for account of Charterers.

22. Owners shall provide gear (for all derricks) capable of handling lifts up to three tons, and maintain the gear of the ship as fitted, also provide ropes, falls, slings and blocks; but gear for heavier lifts shall be for Charterers' account. Owners also to provide lanterns and oil for nightwork, and steamer to give use of electric light, when so fitted. The Charterers to have the use of any gear on board the steamer.

23. Steamer to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work same day and night, as required, Charterers agreeing to pay winchman, and crew including officers for overtime work done in accordance with the working hours and rates stated in the ship's Articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of short steam, or a disabled winch, or winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled, "An Act relating to Navigation of Vessels, etc.," and also subject to the rules governing the Steamship trade of the New York Produce Exchange.

25. Nothing herein stated is to be construed as a demise of the Steamer to the Time Charterers. The Owners to remain responsible for the navigation of the Steamer, insurance, crew, and all other matters, same as when trading for their own account.

26. A commission of Two & One Half (2½%) per cent. upon the gross amount of this Charter, payable by the Steamship and Owners due to Gen-

eral Steamship Corporation, upon the signing hereof, Steamship lost or not lost, and also upon any continuation or extension of this Charter or on sale of Vessel.

27. An address commission of 2½ per cent. payable to for division with Joh. Bruhn, Copenhagen, W. L. Comyn & Sons.

28. Penalty for non-performance of this Contract, estimated amount of damages.

29. Wherever the word "Coal" may appear in this Charter party it shall be understood to mean "Diesel Oil Fuel", and wherever the word "Steamer" may appear, it shall be understood to mean "Motorship".

DAMPSKIBSSELSK DANNEBORG.
(C. K. HANSEN, Mgr.),
Owners of the Motorship "Stjerneborg."
By General Steamship Corp. Ltd.
as Agents,
By J. A. JEANS,
Charter Department,
By telegraphic authority received from
Joh. Bruhn, Copenhagen.
W. L. COMYN & SONS,
By W. LESLIE COMYN, President.

Witness to both signatures:

[Witness] J. L. COMYN.

(Original)

EXHIBIT Q-2

M/S "Stjerneborg"

PORTS OF CALL

Arr. Astoria, Oregon, May 15, 1934.
Left Astoria, Oregon, May 16, 1934.
Arr. Grays Harbor, Washington, May 16, 1934.
Left Grays Harbor, Washington, June 26, 1934.
Arr. New Westminster, B. C., June 27, 1934.
Left New Westminster, B. C., June 30, 1934.
Arr. Vancouver, B. C., June 30, 1934.
Left Vancouver, B. C., July 8, 1934.
(Voyage to Australia, other foreign countries, and return.)
Arr. San Pedro, California, December 30, 1934.
Left San Pedro, California, December 30, 1934.
Arr. Marshfield, Oregon, January 2, 1935.
Left Marshfield, Oregon, January 4, 1935.
Arr. Empire City, Oregon, January 4, 1935.
Left Empire City, Oregon, January 7, 1935.
Arr. North Bend, Oregon, January 7, 1935.
Left North Bend, Oregon, January 9, 1935.
Arr. Wauna, Oregon, January 10, 1935.
Left Wauna, Oregon, January 11, 1935.
Arr. Longview, Washington, January 11, 1935.
Left Longview, Washington, January 12, 1935.
Arr. Linton, Oregon, January 12, 1935.
Left Linton, Oregon, January 14, 1935.
(Voyage to the Orient and return.)
Arr. San Pedro, California, May 4, 1935.
Left San Pedro, California, May 6, 1935.

Arr. San Francisco, California, May 8, 1935.
Left San Francisco, California, May 11, 1935.
Arr. Grays Harbor, Washington, May 14, 1935.
Left Grays Harbor, Wash., August 22, 1935.

[115]

EXHIBIT R-2

M/S Brand

PORTS OF CALL

Arr. Los Angeles, California, May 10, 1934.
Left Los Angeles, California, May 11, 1934.
Passed Colon, Panama Canal, May 26, 1934, en route for Europe.
On return from Europe,
Arr. Balboa, Panama Canal, July 31, 1934.
Arr. Los Angeles, California, Aug. 22, 1934.
Left Los Angeles, California, Aug. 23, 1934.
Arr. Vancouver, B. C., Aug. 27, 1934.
Left Vancouver, B. C., Sept. 1, 1934.
(Voyage to the Orient and return.)
Arr. Los Angeles, California, Mar. 28, 1935.
Left Los Angeles, California, Mar. 28, 1935.
Arr. San Francisco, California, Mar. 30, 1935.
Left San Francisco, California, Apr. 2, 1935.
Arr. Raymond, Washington, Apr. 4, 1935.
Left Raymond, Washington, Apr. 7, 1935.
Arr. Aberdeen, Washington, Apr. 7, 1935.
Left Aberdeen, Washington, Apr. 13, 1935.
(Voyage to the Orient and return.)

Arr. Columbia River, June 1, 1935.
Left Columbia River, June 2, 1935.
Arr. Raymond, Washington, June 3, 1935.
Left Raymond, Washington, June 5, 1935.
Arr. Aberdeen, Washington, June 5, 1935.
Left Aberdeen, Washington, June 7, 1935.
Arr. Port Angeles, Washington, June 8, 1935.
Left Port Angeles, Washington, June 10, 1935.

[116]

EXHIBIT S-2

PLEDGE AGREEMENT

For valuable considerations and to secure the payment by the undersigned of accounts owing to Signal Oil and Gas Company, a Delaware corporation, hereinafter termed "pledgee", for fuel oil supplied to the vessels listed below under charter to the undersigned, the undersigned does hereby assign, transfer and pledge to Signal Oil and Gas Company, a Delaware corporation, the following chattels, evidences of indebtedness and liability, bonds, stocks, warrants, commercial paper, credits, choses, claims and demands, to-wit:

1. Two certificates of deposit in the First National Bank of Seattle in the amount of $5000.00 each payable to the undersigned and each dated April 4, 1934.

2. Claims for insurance under policies BC1932 and BC1933 of the Union Marine & General Accident Company, Limited, of Liverpool, being policies of insurance each in the amount of £2,000 on the M/S "Stjerneborg"

and M/S "Sunnanvik"; open policy BC 1506 in the amount of £2000 in the same company on the M/S "Stjerneborg".

3. Claim for moneys due from the owners of the M/S "Samuel Bakke" in the amount of $1500.00.

4. Assignment of our so-called London account in the estimated amount of approximately $6500.00, said assignment being dated June 1, 1934.

5. Equity of the undersigned in collateral pledged to National Bank of Commerce of Seattle.

6. Freights due the undersigned from cargo loaded and to be loaded on the M/S "Sterneborg" and the M/S "Sunnanvik" on which First National Bank of Seattle holds assignments dated April 18, 1934, which freights are collected by the undersigned and delivered to the First National Bank of Seattle.

7. Stocks in companies as follows:

150 shares Standard Oil of California common.
25 shares Great Northern preferred.
25 shares Atchison, Topeka and Santa Fe.
25 shares Southern Pacific.
100 shares Curtis Wright.
27 and 53/100 shares North American.
25 shares United Aircraft.
100 shares National City Bank of New York.

all subject to a pledge heretofore given on the 13th day of February, 1932, to the First National Bank of Seattle. [117]

The indebtedness which this pledge agreement is given to secure is as follows:

Fuel oil supplied to—	
M/S Stjerneborg	$3,824.65
S/S Nordpol	1,303.68
M/S Belpamela	2,114.51
M/S Sunnanvik	2,233.22
M/S Samuel Bakke	633.38
M/S Brand	4,631.71
M/S Nordhval	3,511.80

The above listed collateral is now deposited with, and pledged to, the First National Bank of Seattle to secure the payment of indebtedness owing by the undersigned to it in the amount of $48,224.84, which amount includes a promissory note in the principal amount of $1,000.00 signed by R. C. Ward, payable to and endorsed by the undersigned, and such further advances as the First National Bank of Seattle may make not in excess of $9000.00 for the payment of charter hire on the M/S "Stjerneborg". It is expressly agreed that this assignment and pledge is subject to the prior pledgee's lien of said First National Bank.

The undersigned hereby directs said First National Bank to deliver said collateral and any sums realized therefrom to the Signal Oil and Gas Company, a Delaware corporation, when the pledgee's

lien of said First National Bank shall have been fully satisfied. In case of depreciation of value of any of said collateral, or if the pledgee should deem itself insecure, the undersigned agrees to deposit additional collateral in an amount or value satisfactory to the pledgee. The pledgee may, without previous demand upon or notice to the undersigned, or advertisement of any kind, in case of non-payment of all or any part of such indebtedness and liabilities or default in any terms or conditions of any instrument given in connection therewith, or of depreciation of the value of any of said collateral, or if it should deem itself insecure, realize upon the collateral or any part thereof by selling the whole or any part thereof at public or private sale, with or without notice, and for cash, credit, or future delivery, and apply the proceeds, after deducting all court or other costs and expenses incurred in the preservation, collection, sale or delivery of said collateral, to the payment of all or any portion of said indebtedness. The undersigned agrees to pay any deficiency remaining after such application. If the sale is public, the pledgee may be a purchaser at said sale. Nothing herein contained shall preclude the pledgee from collecting on any indebtedness or obligation hereby secured without resorting to said collateral. Nothing herein contained shall constitute any release or waiver of any lien which Signal Oil and Gas Company, a Delaware corporation, may have on or against the vessels hereinabove described for fuel oil supplied to such vessels.

The pledgee shall not be required, except at its option, to realize upon any collateral, collect the principal, interest or dividends thereon, exercise any rights or options of the undersigned pertaining thereto, make presentment, demand, protest or [118] give notice of protest, non-acceptance or non-payment, to keep the collateral insured, nor to do any other thing for the protection, enforcement or collection of such collateral; and under no circumstances shall pledgee be in any way responsible for failure to act in such behalf; nor shall it be in any way responsible for any negligent act or default of any of its collecting agents or correspondents. The undersigned, however, agrees that it will repay to the pledgee upon demand all reasonable sums which the pledgee may expend or incur in enforcing, collecting, conserving or protecting any collateral and all such sums shall be secured by this pledge. It is further agreed that the pledgee may extend or consent to the extension of the time of payment or maturity of any collateral. The undersigned hereby waives presentment, demand, protest, notice of protest, and notice of non-acceptance or non-payment with respect to any indebtedness, obligation or liability secured hereby.

The pledgee is authorized to transfer to itself or to any other person all or any of said collateral, and may fill in all blanks in any transfers of collateral, power of attorney, or other documents delivered to it. Upon request, the undersigned will execute all such instruments as may be reasonably

required to carry out the provisions of this agreement. The obligation of the undersigned hereunder shall not be affected by the release or substitution of any collateral nor by the release of or any renewals or extensions of time to, any party to any instrument, obligation or liability secured hereby or to which the undersigned is a party; nor shall the pledgee be bound to resort to or exhaust its recourse nor to take any action against any other parties.

The pledgee may assign or transfer the whole or any part of the indebtedness, obligation or liability of the undersigned and may transfer therewith as collateral security the whole or any part of the collateral herein mentioned; and all obligations, rights, powers and privileges herein named shall inure to the benefit of the assignee and shall bind the heirs, executors, administrators, successors or assigns of the parties hereto, as the case may be.

Dated at Seattle, Washington, the 7th day of July, 1934.

W. L. COMYN & SONS.
By W. LESLIE COMYN.

Witness:
R. A. KENDALL.

State of Washington,
County of King—ss.

W. Leslie Comyn being first duly sworn on oath deposes and says:

That he is President of W. L. Comyn & Sons, the party having executed the above pledge agreement; that he executed the same on behalf of said W. L. Comyn & Sons, being thereunto duly authorized, for the uses and purposes therein mentioned.

W. LESLIE COMYN. [119]

Subscribed and sworn to before me this 7th day of July, 1934.

[Seal] ARTHUR BRATSETT,
Notary Public in and for the State of Washington, residing at Seattle.

First National Bank of Seattle acknowledges receipt of triplicate original of this agreement and agrees that it will make no further advances against the collateral herein described without the consent in writing first obtained of John S. Robinson or Glenn J. Fairbrook, attorneys for Signal Oil and Gas Company, a Delaware corporation.

FIRST NATIONAL BANK OF SEATTLE,
By P. B. TRUAX,
V. P.

(July 7th, 1934.) [120]

EXHIBIT T-2

CREDITORS' AGREEMENT

This is an agreement between W. L. Comyn & Sons, a Washington corporation, herein called "the company", and the undersigned creditors thereof.

The company is engaged in business of ship operators and has become indebted to the undersigned creditors in the amount set opposite their respective names, (exclusive of indebtedness to banks, which is secured by certain collateral and also exclusive of a claim of the United States Government in the sum of $3189.90).

The company owing to the strike on the Pacific Coast has suffered severe losses, but has many vessels under charter and valuable operating agreements with foreign owners, and has valuable contracts for the freighting of cargo, which will inure to the financial benefit of the company and its creditors if the company can proceed in an orderly way with its functions and the liquidation of its indebtedness. It is therefore deemed advisable by the undersigned creditors that payment of their obligations be extended until September 1, 1935.

Now, therefore, in consideration of One and no 100 ($1.00) Dollar and other good and valuable consideration, the receipt whereof is hereby acknowledged, of one to the other, and the execution of this agreement by each of the undersigned creditors of the company, it is agreed:

The company may pay all creditors in full whose claims do not exceed the sum of $100.00, from any moneys available to the company.

The undersigned creditors, and each of them, agree that they will not enforce by legal proceedings or otherwise, directly or indirectly, the obligations of the company to the undersigned creditors until after September 1, 1935, and further agree that they will not sell, assign or transfer any obligation of the company held by them until after that date.

In order to enable the company to obtain bank credit, the undersigned creditors, and each of them, agree to subordinate the claims herein mentioned to any indebtedness incurred subsequent to the date of this agreement.

Any creditor may sign a copy of this agreement with like effect as though the signature had been appended to the original. Unless the agreement is signed by all creditors listed below, no one creditor signing shall be bound thereby.

Dated at Seattle this 10th day of August, 1934.

W. L. COMYN & SONS,
By W. LESLIE COMYN.

This agreement is signed by Signal Oil and Gas Company with the understanding that nothing therein contained shall constitute any release or waiver of any lien or the right to a lien which Signal Oil and Gas Company, a Delaware corporation, has or may have on or against any vessels

for supplies furnished said vessels, or any of them, while said vessels, or any of them, were [121] entrusted to the management of the debtor named in said agreement, provided, however, that Signal Oil and Gas Company agrees not to enforce such liens against any of said vessels for the period this agreement is in effect unless and excepting enforcement is necessary to prevent the loss of said lien rights by destruction, sale or other disposition of said vessels, or any of them.

[Seal] SIGNAL OIL AND GAS COMPANY.
By H. J. MARCH,
Sect. [122]

EXHIBIT U-2

W. L. Comyn & Sons
Freight Contractors
General Commission Merchants
Steamship Agents and Brokers
427 Colman Bldg.
Seattle, Wash.

April 3, 1935.

Messrs. Signal Oil & Gas Company,
Signal Oil Building,
Los Angeles, California.

Dear Sirs:

Referring to our letter under date of August 24th, 1934, and the creditors' agreement signed by

you, we deeply regret to now have to report to you that, after eight months' strenuous effort, we have been quite unable to obtain the necessary funds to continue the Cascade Line, Inc., in its regular service to Europe.

Neither have we been able to obtain suitable ships for the Cascade Line on berth basis from foreign owners owing to the advance in the cost of loading on the Pacific Coast since the strike to the extent of over 40% and by the added cost of fuel since the first of the year amounting to approximately 35%, making operation of vessels both in the Line and on freight contracts entirely unprofitable on the basis of present Conference rates on liner business and on present freight rates on contract business.

During the past eight months, owing to these additional costs, we have been unable to make any profits and have now exhausted our financial resources and the only asset left to this company is the stock of the Cascade Line in which, as previously advised you, we have invested approximately $75,000.00 and which, for the reasons stated above, is now valueless.

When we addressed our letter to you on August 24th, 1934, we had reason to believe that financial assistance would be forthcoming from our bankers, whom we have paid off in full, but the labor conditions now existent on the coast are and have been of such a nature that, after an executive committee

meeting, they decided that they were unwarranted in granting us the necessary accommodation.

This company owes general claims approximating $94,000.00. Its assets now consist of office furniture, on which the landlord has a lien for unpaid rent, and doubtful accounts receivable amounting to approximately $1500.00.

The Pacific Freighters Limited, of Vancouver, B. C., in which we had a 50% interest, has, unfortunately, met with severe reverses owing to the existing conditions and has had to be wound up, so that any possible equity in the above assets would, we fear, be absorbed by wages and the Treasury claim entitled to priority.

Any legal liquidation of the company would, therefore, seem to be useless. [123]

In view of the above conditions and the hopeless outlook for obtaining the necessary capital or operating at a profit, we are forced to discontinue the operation of the business and therefore desire to release you from the creditors' agreement.

Yours very truly,

W. L. COMYN & SONS,

By W. LESLIE COMYN,

President. [124]

EXHIBIT V-2

M.S. Stjerneborg
Grays Harbor, May 23rd, 1934

Messrs. W. L. Comyn & Sons
427 Colman Blvd.
Seattle, Wash.

Have received your letter of May 22nd regarding the quantity of oil on board. I hereby beg to inform you that upon docking at Astoria there was on board 91 tons of oil.

Yours very truly,
M. ROSENHOJ [125]

EXHIBIT W-2

M.S. Stjerneborg
Grays Harbour d. 17' Maj 1935.

Uddrag af M.S. Stjerneborg's Maskindagbog Astoria, Ore. Tirsdag den 15' Maj 1934. Kl. 12,10 begyndt at fylde Br-Oile.

Modtaget fra Standard Oil Co. 3644 barrels—501 tons Braendselsolie.

Vaegtf. o,88. Flammep. P.M. 182 Gr. F.

Braendselsolien fyldt i No. 1-2-3 Bundtanke.

Onsdag den 16' Maj 1934.

Kl. 1,00 faerdig med Oliefyldning.

EMIL CARLSEN
1' Maskinmester.

Translation

ABSTRACT OF ENGINE-ROOM LOG-BOOK
M/S "STJERNEBORG"

Astoria, Ore., Tuesday, May 15th, 1934

12:10 a.m. commence filling oil. (dizel)

Received from "Standard Oil Co." 3644 barrels —501 ton dizel-oil.

Gravity 0,88, point of ignition 182 F.

Wednesday, May 16th, 1934

1:00 a.m. oil filling complete.

I hereby certify that above statement is correct and true.

M. ROSENHOJ,
Master.

AAGE HANSEN,
1st Officer. [126]

EXHIBIT X-2

Translation

ABSTRACT OF ENGINE-ROOM LOG-BOOK
M/S "STJERNEBORG"

Astoria, Ore., Tuesday, May 15th, 1934

Fuel-oil on board at 12:00 (noon) 91 tons.

12:10 p.m. commence filling oil (Diesel).

Received from Standard Oil Co. 3644 barrels—501 tons diezel-oil.

Gravity 0,88. Point of ignition 182 F.

Wednesday, May 16th, 1934

1:00 a.m. oil filling complete.

Sydney, Australia, August 15th, 1934

Fuel-oil on board measured by Surveyor, 402 tons.

Engines ready at 12:00 noon.

At 15.25 beginning maneuvers to 15.52 full speed; departure Sydney.

I hereby certify that above statement is correct and true.

(Signed) M. ROSENHOJ,
Master.

(Signed) AAGE HANSEN
1st Officer. [127]

EXHIBIT Y-2

CERTIFICATE OF RE-DELIVERY

This Is to Certify that the Motor Vessel "Stjerneborg" was re-delivered to the Owners on the fifteenth (15th) day of August, One thousand nine hundred and thirty-four (1934) at Two (2) o'clock P. M. at the port of Sydney, N.S.W., with Four Hundred and Two (402) tons of oil remaining in bunkers as per attached statement. 2918.52 barrels.

M. ROSENHOJ,
Master, M.S. "Stjerneborg".

P. H. SMITH,
COMYN, SMITH & COMPANY
Agents for
W. L. COMYN & SONS,
Time charterers.

Sydney, N.S.W.
15/8/'34

[Endorsed]: Stipulation of Facts. Filed May 9, 1938. [128]

[Title of District Court and Cause—Consolidated.]

MEMORANDUM DECISION

Filed Dec. 7, 1938

John S. Robinson, Central Bldg., Seattle, Wash., and Fairbrook & Williams, Central Bldg., Seattle, Wash.,

Proctors for Libelant in both causes.

Hayden, Merritt, Summers & Bucey, Central Bldg., Seattle,

Proctors for Claimants in both causes.

These two causes have been submitted upon a stipulation of facts. The libel in cause No. 7331 was filed May 11, 1935. In cause No. 7334 the libel was [133] filed June 5th, 1935. In each case the respondent vessel was libeled for fuel oil supplied by libelant.

In the case of the "Brand" the oil was furnished in April and May, 1934. In the case of the "Stjerneborg", in May, 1934.

The Claimant-owner in each case, by Answer, denies that the oil was either furnished upon the credit of the vessel or upon the order of the owner or one authorized by the owner and alleges that it was furnished upon the order and personal credit of the charterer known by libelant to be such under a charter party which provided, in effect, that the charterer should pay for all coal, oil and other fuel.

Libelant cites: 46 U. S. C. A., Sec. 971, et seq.; The South Coast, 251 U. S. 519, 64 L. Ed. 386; The Golden Gate, 52 Fed. (2d) 397; The Luddeo 41, 66 Fed. (2d) 997; The Palnatoka, 1934 A. M. C. 936; The Everosa, 93 Fed. (2d) 732; Lower Coast Transp. Co. v. Gulf Refining Co., 211 Fed. 336; The Commack, 299 Fed. 229; Ramsay v. Alegre, 25 U. S. 395; Paynoux v. Howard, 32 U. S. 506; The Kimball, 70 U. S. 37; The Emily Sanders, 84 U. S. 666; The Donna Lane, 1933 A. M. C. 470; The President Arthur, 1934 A. M. C. 1179, 73 L. Ed. 846; El Amigo, 285 Fed. 868; The Steamer St. Lawrence, 17 L. Ed. 180; The Alabama, 22 Fed. 449; The Queen of St. Johns, 31 Fed. 24; The Henry S, 42 Fed. Supp. 953; The Eastern Short, 24 Fed. (2d) 443; Kalorama, 10 Wall. 204; The Grand Republic, 138 Fed. 615, affirmed, 144 Fed. 1022; Marsodok, 94 Fed. (2d) 339; In re Marine Transit, 94 Fed. (2d) 414; The Portland, 273 Fed. 401; The South Coast, 253 Fed. 327; Knutsen v. Associated [134] Oil Co., 284 U. S. 682; 76 L. Ed. 576; The President Arthur, 72 Fed. (2d) 276; The Astorian, 57 Fed. (2d) 85; The Robin Goodfellow, 26 Fed. (2d) 343; The Eastern, 257 Fed. 874; The City of Seattle, 1932 A. M. C. 1531; The Charles R. Way, 265 Fed. 422; The J. W. Hennessey, 57 Fed. (2d) 77, 38 C. J. 1241; The Bronx, 246 Fed. 809; Restatement of the Law, "Conflict of Laws", Chapter 1, section 2, page 5; 38 C. J. 1243; 38 C. J. 1244; In re Marine Transit Corp., 20 Fed. Suppl. 414; Rem. Rev. Stat. Sec. 1182; Fairbanks-Morse Co. v. Union Bank & Trust

Co., 55 Wash. 538; 104 Pac. 815; Oregon Code Ann. 51-617; Code of Civil Proc. (California), Sec. 813.

Respondents cite: 46 U. S. C. A., Sec. 975; June 5, 1920, C. 250, Sec. 30, subsec. T, 41 Stat. 1006; The Maritime Lien Act of 1910; Piedmont, etc. Coal Co. vs. Seaboard Fisheries Co., 65 L. Ed. 97; The President Arthur, 73 L. Ed. 846; Taylor vs. The Commonwealth, Fed. Cases No. 13,787; The President Arthur, 72 Fed. (2d) 276; The City of Seattle, 61 Fed. (2d) 763 (cited as 51 Fed. (2d) 763); The Defiance, 3 Fed. (2d) 48; Page on "Contracts", 2nd Edition, Sec. 3571, p. 6171, Sec. 2048, p. 3543; 12 C. J. 451; 43 C. J. 251, 247, 248; 6 R. C. L. Sec. 243, p. 855; Carver on Carriage of Goods by Sea, 8th Ed. Sec. 210, p. 315; 13 C. J. 423; London Assurance v. Companhia de Moagens, etc., 167 U. S. 149, 162; 42 L. Ed. 113, 121; Liverpool, etc. v. Phoenix Ins. Co., 129 U. S. 397, 462; 32 L. Ed. 788, 799; Boseman v. Connecticut General Life Insurance Co., 301 U. S. 196, 81 L. Ed. 1036; Pritchard v. Norton, 106 U. S. 124; 27 L. Ed. 104, 106, 108; Olympia Canning Co. v. Union Marine Ins. Co., 10 Fed. (2d) 72; U. S. Alaska Pack. Co. v. Luketa, 58 Fed. (2d) 944; The Orammore, 24 Fed. 922, 927, affirmed [135] 92 Fed. 396; Liberty etc. Company v. New England Inv. Shares, 25 Fed. (2d) 493, 495; The Helen L. 1937 A. M. C. 1170; The Bellingham, 1927 A. M. C. 11; 46 U. S. C. A., Sec. 975; The Hammond, 30 Fed. (2d) 890; The Mona, 282 Fed. 468; Pensacola Shipping Co. vs. U. S. Shipping Board, E. F. Corp., 277 Fed. 889; The Cratheus,

263 Fed. 693; The Western Wave, 2 Fed. Supp. 886; The Pjala, 7 Fed. Sup. 618; The Kate, 41 L. Ed. 512; The Thordis, 290 Fed. 255; The Dictator, 18 Fed. (2d) 131; The Henry W. Breyer, 17 Fed. (2d) 423; The Millinocket, 266 Fed. 392; The Western Wave, 77 Fed. (2d) 695; The Roseway, 34 Fed. (2d) 131; The Morganza and the Mossabee, 17 Fed. (2d) 946; Frye & Sons vs. U. S., 1 Fed. (2d) 963; Morse Drydock & Repair Co. vs. U. S., 1 Fed. (2d) 233; The Ascutney, 289 Fed. 802; The Aljohn, 7 Fed. Supp. 788; U. S. v. Certain Subfreights, 300 Fed. 981; The West Haven, 297 Fed. 523; The El Amigo, 284 Fed. 868; The J. W. Hennesey, 57 Fed. (2d) 77; The Marsodock, 94 Fed. (2d) 339; The Portland, 273 Fed. 401; The Golden Gate, 52 Fed. (2d) 397; The Luddeo No. 41, 66 Fed. (2d) 977; The Anna E. Morse, 285 Fed. 794; The Augusta W. Snow, 46 Fed. (2d) 992; The Murray vs. Lazarus, Fed. Cases No. 9,962; Phelps vs. The Camilla, Fed. Cases No. 11,073; The Anna C. Pratt, Fed. Cases No. 409, affirmed in 15 L. Ed. 267; Taylor vs. The Commonwealth, Fed. Cases No. 13,787; The Astorian, 57 Fed. (2d) 85; The Robin Goodfellow, 26 Fed. (2d) 343; The Huron, 278 Fed. 383.

Cushman, District Judge:

The stipulated facts show that the oil was furnished upon the credit of the vessels and that, in consequence, the asserted liens were created. [136]

The South Coast, 251 U. S. 519; Piedmont Coal

Co. v. Seaboard Fisheries Co., 254 U. S. 1-10; citing with approval, The Bronx, 246 Fed. 809; The Golden Gate, 52 Fed. (2d) 397, certiorari denied, Knutsen v. Associated Oil Co., 284 U. S. 682; The Luddoc, 41, 66 Fed. (2d) 997; The Portland, 273 Fed. 401; The Astorian, 57 Fed. (2d) 85-89 et seq. See also The Everosa, 93 Fed. (2d) 732; The Palnatoke, 1934 A. M. C. 936.

An alternative defense asserted in each case is that the acceptance, in July, 1934, by libelant from charterer of a pledge of certain collateral to secure payment for the oil furnished and the release by libelant of the excess realized therefrom after satisfaction of the senior claim of libelant's co-pledgee constituted a waiver, if it existed, of the asserted lien. The pledge agreement provided:

> "Nothing herein contained shall preclude the pledgee from collecting on any indebtedness or obligation hereby secured without resorting to said collateral. Nothing herein contained shall constitute any release or waiver of any lien which Signal Oil and Gas Company, a Delaware corporation, may have on or against the vessels hereinabove described for fuel oil supplied to such vessels.".

No interest in the pledged collateral upon the part of claimants or respondents is shown. No intervening rights are involved. The owners are not shown to have relied upon this pledge or to have known of it. This transaction did not constitute a waiver.

A further alternative defense asserted is that libelant, by agreeing in August, 1934, not to enforce prior to September 1st, 1935, payment for the oil by charterer (from which agreement libelant was by charterer released in April, 1935) waived any lien which might exist. [137]

This agreement provided:

> "This agreement is signed by Signal Oil and Gas Company with the understanding that nothing therein contained shall constitute any release or waiver of any lien or the right to a lien which Signal Oil and Gas Company, a Delaware corporation, has or may have on or against any vessels for supplies furnished said vessels, or any of them, while said vessels, or any of them, were entrusted to the management of the debtor named in said agreement; provided, however, that Signal Oil and Gas Company agrees not to enforce such liens against any of said vessels for the period this agreement is in effect unless and excepting enforcement is necessary to prevent the loss of said lien rights by destruction, sale or other disposition of said vessels, or any of them."

No intention upon Libelant's part to waive its lien is shown by this transaction nor did it amount to laches.

In the case of the Stjerneborg, No. 7331, a further alternative defense or partial defense has been interposed, Claimant alleging.

"A-II

That the diesel oil so furnished on or about May 14, 1934, at the port of Astoria, state of Oregon, by libelant to said motorship was not a lienable necessary since, when ordered and received, it was not essential to the voyage then contemplated by said motorship, but was desired by the charterer merely to comply with its obligations under said charter party."

In this matter the facts stipulated are as follows:

* * * * * * * *

"(9) That under said contract libelant caused to be delivered to the vessel "Stjerneborg", on the order of W. L. Comyn & Sons, a quantity of fuel oil at Astoria, Oregon, on or about the 15th day of May, 1934; that this quantity of oil was ordered by W. L. Comyn & Sons in letter dated May 1, 1934, reciting that 'the M/S Stjerneborg which is at present on our time charter will be loading a cargo of lumber *to China and Japan* about the middle of May at Grays Harbor', and requesting delivery of oil at Aberdeen (Copy-Ex. H-2); that to this letter libelant replied by telegram, dated May 7, 1934, suggesting oil delivery at Astoria (Copy-Ex. I-2); that by letter of May 7, 1934, W. L. Comyn & Sons acquiesced in libelant's suggestion for oil delivery at Astoria (Copy-Ex. J-2); that W. L. Comyn & Sons notified

libelant of the arrival of the vessel at Astoria by telegram [138] dated May 14, 1934 (Copy-Ex. K-2); that by letter dated May 14, 1934, libelant acknowledged advice from W. L. Comyn & Sons as to the arrival of the vessel at Astoria for oil (Copy-Ex. L-2); that on May 15, 1934, delivery receipt was signed by the chief engineer and the master of the vessel (Photostatic copy-Ex. M-2), and later libelant issued its invoice for $3824.65, addressed to 'MS Stjerneborg and Owners, c/o W. L. Comyn & Sons, 427 Colman Bldg., Seattle, Washington' (Copy-Ex. N-2).

That said delivery as evidenced by said delivery receipt (Ex. M-2) and by said invoice (Ex. N-2) in the sum of $3824.65, constitute the claim in suit, upon which libelant seeks recovery against the respondent vessel 'Stjerneborg'.

* * * * * * *

That said 'Stjerneborg' charter party also contained the following clause:

"13. Quantity of bunkers on delivery as on board. Bunkers on redelivery not less than 400 tons."

* * * * * * *

(11) That as a result of a strike of longshoremen, effective in most ports of the Pacific Coast, few vessels loaded or discharged cargo, and few vessels moved in commerce from the middle of May, 1934, to the end of July, 1934;

that partly in consequence of this condition, W. L. Comyn & Sons became financially embarrassed, and gradually delayed from time to time in making payments to libelant for oil bought under said contract.

* * * * * * * *

(16) That the quantity of oil on board the vessel 'Stjerneborg' at the time of arrival at Astoria, Oregon, on May 15, 1934, prior to receiving oil then and there from libelant, was 91 tons, as shown by statement of the master dated May 23, 1934 (Copy-Ex. V-2).

That the quantity of oil received by the vessel 'Stjerneborg' then and there was 501 tons, as shown by abstract of log, certified by the master and first officer (Copy-Ex. W-2).

That on or about July 5, 1934, at Vancouver, B. C., the vessel 'Stjerneborg' received 69.82 tons of oil—such quantity, however, not being supplied by or for libelant.

That the quantity of oil remaining on board the vessel 'Stjerneborg' on August 15, 1934, upon her redelivery under the then current charter party by W. L. Comyn & Sons as chartered to the owner at *Sydney, Australia*, was 402 tons, as [139] shown by statement signed by the master and first officer of the vessel (Copy-Ex. X-2) and as shown by certificate of redelivery signed by the master and Comyn, Smith & Company, Agents for W. L. Comyn &

Sons at Sydney (Copy-Ex. Y-2)." (Emphasis, the Court's).

The foregoing fails to show that the oil furnished by libelant was other than necessary to the voyage then contemplated.

The Decree, in each case, will be for Libelant with interest and costs, which decree, together with any orders based upon the foregoing rulings, will be settled upon notice.

The Clerk is directed to notify the proctors for the parties of the filing of this decision.

[Endorsed]: Filed Dec. 7, 1938. [140]

[Title of District Court and Cause—No. 7331.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for trial before the Court upon Stipulation of Facts and exhibits attached thereto, duly agreed to by libelant and claimant, libelant appearing by Glenn J. Fairbrook, proctor for libelant, claimant appearing by Lane Summers of Hayden, Merritt, Summers & Bucey, proctors for claimant, and the Court having considered said Stipulation of Facts and argument of proctors for libelant and for claimant, does now adopt said Stipulation of Facts and exhibits thereto as its Findings of Fact herein.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

From the Stipulation of Facts and exhibits herein, which the Court has adopted as its Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW:

I.

That fuel oil of the value of Three Thousand, Eight Hundred Twenty-Four Dollars and Sixty-Five Cents ($3,824.65) furnished by libelant to the vessel "Stjerneborg" on May 15th, 1934, was furnished [141] upon the credit of said vessel and that a maritime lien was created therefor.

II.

That said fuel oil was necessary for the voyage of said vessel then contemplated.

III.

That libelant has not waived its maritime lien therefor.

IV.

That decree should be entered for libelant against said vessel, claimant and its stipulators for costs and value, for $3,824.65, together with interest and costs.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [142]

[Title of District Court and Cause—No. 7334.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for trial before the Court upon Stipulation of Facts and exhibits attached thereto, duly agreed to by libelant and claimant, libelant appearing by Glenn J. Fairbrook, proctor for libelant, claimant appearing by Lane Summers of Hayden, Merrit, Summers & Bucey, proctors for claimant, and the Court having considered said Stipulation of Facts and argument of proctors for libelant and for claimant, does now adopt said Stipulation of Facts and exhibits thereto as its Findings of Fact herein.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

From the Stipulation of Facts and exhibits herein, which the Court has adopted as its Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

I.

That fuel oil of the value of Six Hundred Thirty-Eight Dollars [143] and Fifty-Seven Cents ($638.57) furnished by libelant to the vessel "Brand" on April 26th, 1934, and fuel oil of the value of Three Thousand, Nine Hundred Ninety-Three Dollars and Fourteen Cents ($3,993.14) furnished by libelant to the vessel "Brand" on May 11th, 1934, was furnished upon the credit of said vessel and that a maritime lien was created therefor.

II.

That said fuel oil was necessary for the voyage of said vessel then contemplated.

III.

That libelant has not waived its maritime lien therefor.

IV.

That decree should be entered for libelant against said vessel, claimant and its stipulators for costs and value, for $4,631.71, together with interest and costs.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [144]

[Title of District Court and Cause—No. 7331.]

CLAIMANT'S EXCEPTIONS TO COURT'S CONCLUSIONS OF LAW

The exceptions of claimant above named to the Court's Findings of Fact (denominated "Conclusions of Law"), are as follows:

(1) Claimant excepts to the Court's Conclusion of Law No. 1, to the effect that fuel oil was furnished to the respondent vessel upon its credit, and that a maritime lien was created therefor, upon the ground and for the reason that such conclusion is not warranted or justified by the agreed facts, and that such agreed facts require the contrary conclusion, viz. that the fuel oil was not furnished upon the credit of the vessel but upon the individual credit of the charterer of the vessel, and that hence no maritime lien was created.

(2) Claimant excepts to the Court's Conclusion of Law No. 2 to the effect that fuel oil supplied was

necessary for the contemplated voyage of the respondent vessel, because such conclusion is not warranted or justified by the facts as stipulated.

(3) Claimant excepts to the Court's Conclusion of Law No. 3 to the effect that libelant did not waive the maritime lien, upon the ground and for the reason that such conclusion is [145] not warranted or justified by the facts as stipulated.

(4) Claimant excepts to the Court's Conclusion of Law No. 4, upon the ground and for the reason that such conclusion is not warranted or justified by the facts as stipulated, and that in view of delay in the prosecution of the above entitled cause, attributable to libelant, claimant should not be charged with interest.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [146]

[Title of District Court and Cause—No. 7334.]

CLAIMANT'S EXCEPTIONS TO COURT'S CONCLUSIONS OF LAW.

The exceptions of claimant above named to the Court's Findings of Fact (denominated "Conclusions of Law"), are as follows:

(1) Claimant excepts to the Court's Conclusion of Law No. 1, to the effect that fuel oil was furnished to the respondent vessel upon its credit, and that a maritime lien was created therefor, upon the ground and for the reason that such conclusion is not warranted or justified by the agreed facts, and that such agreed facts require the contrary conclusion, viz. that the fuel oil was not furnished upon the credit of the vessel but upon the individual credit of the charterer of the vessel, and that hence no maritime lien was created.

(2) Claimant excepts to the Court's Conclusion of Law No. 2 to the effect that fuel oil supplied was necessary for the contemplated voyage of the respondent vessel, because such conclusion is not warranted or justified by the facts as stipulated.

(3) Claimant excepts to the Court's Conclusion of Law No. 3 to the effect that libelant did not waive the maritime [147] lien, upon the ground and for the reason that such conclusion is not warranted or justified by the facts as stipulated.

(4) Claimant excepts to the Court's Conclusion of Law No. 4, upon the ground and for the reason that such conclusion is not warranted or justified by the facts as stipulated, and that in view of delay in the prosecution of the above entitled cause, attributable to libelant, claimant should not be charged with interest.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [148]

United States District Court, Western District of Washington, Southern Division.

In Admiralty

No. 7331

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

Motorship "STJERNEBORG",

Respondent,

DAMPSKIBSSELSKABET DANNEBROG, a corporation,

Claimant.

DECREE

This matter having come on regularly before the Court for trial upon a Stipulation of Facts agreed to in writing by the proctors for libelant and by proctors for claimant, the Court having heretofore on the 7th day of December, 1938, rendered its memorandum decision herein, and having made and entered Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It Is Adjudged and Decreed that libelant has a maritime lien on the Motorship "Stjerneborg" in the amount of Three Thousand Eight Hundred Twenty-Four Dollars and Sixty-Five Cents ($3,824.65) with interest and costs.

It Is Further Ordered, Adjudged and Decreed that libelant receive and recover from the vessel "Stjerneborg", her tackle, apparel and furniture, and from Dampskibsselskabet Dannebrog, a corporation, claimant, the sum of Three Thousand, Eight Hundred Twenty-Four Dollars and Sixty-Five Cents ($3,824.65), with interest thereon from the 11th day of May, 1935, amounting to Eight Hundred Seventy-Three Dollars and Fifty-Four Cents ($873.54), together with the libelant's costs taxed in the sum of Ninety- [149] Five Dollars ($95.00), and amounting in all to the sum of Four Thousand, Seven Hundred Ninety-Three Dollars and Nineteen Cents ($4,793.19), with interest thereon until paid, and that libelant have execution therefor.

It Is Further Ordered, Adjudged and Decreed that unless this decree be satisfied or an appeal be taken within twenty (20) days after service of a copy of this decree with notice of entry upon the claimant or its proctors, claimant's stipulators for costs and value, National Surety Corporation, cause their engagements to be performed or show cause within four (4) days after the expiration of said twenty (20) days, or on the first day of jurisdiction thereafter, why execution should not issue against

them, their goods, chattels and lands, to satisfy this decree.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
District Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [150]

United States District Court, Western District of Washington, Southern Division.

In Admiralty

No. 7334

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant,

vs.

Motorship "BRAND",

Respondent,

AKTIESELSKABET BORGESTAD, a corporation,

Claimant.

DECREE

This matter having come on regularly before the Court for trial upon a Stipulation of Facts agreed

to in writing by the proctors for libelant and by proctors for claimant, the Court having heretofore on the 7th day of December, 1938, rendered its memorandum decision herein and having made and entered Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It Is Adjudged and Decreed that libelant has a maritime lien on the motorship "Brand" in the amount of Four Thousand Six Hundred Thirty-One Dollars and Seventy-One Cents ($4,631.71) with interest and costs.

It Is Further Ordered, Adjudged and Decreed that libelant receive and recover from the vessel "Brand", her tackle, apparel and furniture, and from Aktieselskabet Borgestad, a corporation, claimant, the sum of Four Thousand, Six Hundred Thirty-One Dollars and Seventy-One Cents ($4,631.71), with interest thereon from the 5th day of June, 1935, amounting to One Thousand Thirty-Eight Dollars and Eighty-Three Cents ($1,038.83), together with the libelant's costs taxed in the sum of Eighty-Five Dollars ($85.00), [151] and amounting in all to the sum of Five Thousand, Seven Hundred Fifty-Five Dollars and Fifty-Four Cents ($5,755.54), with interest thereon until paid, and that libelant have execution therefor.

It Is Further Ordered, Adjudged and Decreed that unless this decree be satisfied or an appeal be taken within twenty (20) days after service of a copy of this decree with notice of entry upon the claimant or its proctors, claimant's stipulators for

costs and value, Pacific Indemnity Company, cause their engagements to be performed or show cause within four (4) days after the expiration of said twenty (20) days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, to satisfy this decree.

Done at Tacoma, Washington, this 7th day of March, 1939.

EDWARD E. CUSHMAN,
District Judge.

Presented by:
GLENN J. FAIRBROOK,
660 Central Building,
Seattle, Washington.

[Endorsed]: Filed Mar. 7, 1939. [152]

[Title of District Court and Cause—No. 7331.]

CLAIMANT'S EXCEPTIONS TO THE COURT'S DECREE

The exceptions of claimant above named to the Court's decree in the above entitled cause show:

(1) That claimant excepts to that portion of the decree reciting that libelant has a maritime lien against the respondent vessel, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(2) Claimant excepts to that portion of the decree rendering judgment against the respondent vessel and the claimant thereof, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(3) Claimant excepts to that portion of the decree which allows judgment in favor of libelant for interest, upon the ground and for the reason that the delay in the prosecution of the above entitled action, attributable to libelant, does not [153] justify the exercise of the court's discretion in such allowance.

HAYDEN, MERRITT,
SUMMERS & BUCEY,
Proctors for Claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,
U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [154]

[Title of District Court and Cause—No. 7334.]

CLAIMANT'S EXCEPTIONS TO THE COURT'S DECREE

The exceptions of claimant above named to the Court's decree in the above entitled cause show:

(1) That claimant excepts to that portion of the decree reciting that libelant has a maritime lien

against the respondent vessel, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(2) Claimant excepts to that portion of the decree rendering judgment against the respondent vessel and the claimant thereof, upon the ground and for the reason that the same is not warranted or justified by the stipulation of facts in the above entitled cause.

(3) Claimant excepts to that portion of the decree which allows judgment in favor of libelant for interest, upon the ground and for the reason that the delay in the prosecution of the above entitled action, attributable to libelant, does not [155] justify the exercise of the court's discretion in such allowance.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant.

The foregoing exceptions are hereby allowed this 7th day of March, 1939.

EDWARD E. CUSHMAN,

U. S. District Judge.

[Endorsed]: Filed Mar. 7, 1939. [156]

[Title of District Court and Cause—No. 7331.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

Disbursements

	Amount Claimed	Amount Allowed
Clerk's fees	$10.00	
Marshal's fees	25.00	
Attorney's fees	20.00	
Commissioner's fees		
Master in Chancery's fees		
Reporter's fees		
Miscellaneous fees		
Bond premium 1935, 1936, 1937 and 1938—4 years at $10.00	40.00	
Witness fees (Give name, address, number days of attendance, and mileage)		
Taxed	$95.00	

Taxed 193

Clerk. [157]

United States of America,
Western District of Washington—ss.

Glenn J. Fairbrook, being duly sworn, deposes and says: That he is one of the Proctors for the Libelant in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

GLENN J. FAIRBROOK

Subscribed and sworn to before me this 30th day of January, 1939.

[Seal] D. T. CHILD

To Hayden, Merritt, Summers & Bucey, Proctors for Claimant.

You will please take notice that on Monday the twenty-seventh day of February, 1939, at the hour of ten o'clock A. M., application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

[Service acknowledged February 16, 1939.]

[Endorsed]: Filed Mar. 2, 1939. [158]

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

	Amt. Claimed	Amt. Allowed
Clerk's fees	$10.00	
Marshal's fees	15.00	
Attorney's fees	20.00	
Commissioner's fees		
Master in Chancery's fees		
Reporter's fees		
Miscellaneous fees		
Bond premium 1935, 1936, 1937 and 1938—4 years at $10.00	40.00	
Witness fees		
Give name, address, number of days of attendance and mileage		
Taxed	$85.00	

Taxed ....., 193

.....

Clerk.

United States of America,
Western District of Washington—ss.

Glenn J. Fairbrook, being duly sworn, deposes and says: That he is one of the Proctors for the Libel-

ant in the above-entitled cause; and as such has knowledge of the facts herein set forth; that the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause and that the services charged herein have been actually and necessarily performed as herein stated.

GLENN J. FAIRBROOK

Subscribed and sworn to before me, this 30 day of January, 1939.

[Seal] D. T. CHILD [159]

To Hayden, Merritt, Summers & Bucey, Proctors for Claimant.

You will please take notice that on Monday the twenty-seventh day of February, 1939, at the hour of ten o'clock A. M. application will be made to the Clerk of said Court, to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

Service of the within and foregoing Memorandum of Costs and Disbursements and notice of the taxation thereof by the receipt of a true copy thereof, hereby is admitted in behalf of all parties entitled

to such service by the Rules of Court, this 16th day of February, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY (EF)

Proctors for Claimant.

[Endorsed]: Filed Mar. 2, 1939. [160]

[Title of District Court and Cause—No. 7331.]

DOCKET ENTRIES

1935

May 11—Filed Libel.
" Appearance
" Praecipe
" Stipulation for Costs
Issued Monition and Attachment

May 15—Filed Marshal's Return on Monition and Attach.

May 16—Filed Claim of Ownership, by Dampskibsselskabet Danneborg, a corp.
Filed Appearance, Hayden, Merritt, Summers & Bucey, attys. for Claimant
Filed Release Bond ($5,000 Natl. Surety Co.)
Issue Notice of Bonding to U. S. Marshal
Filed Return

Jun. 3—Filed Affidavit of Publication

1936

July 7—Entered order, cause dismissed (Rule 48) Proctors notified

July 9—Entered order, oral motion Libelant, Order of Dismissal vacated

1937

May 14—Filed Answer (and Affirmative Defense)

July 6—Entered order, over Term

1938

Feb 1—Trial April 7; Apr. 6, Filed Stip. to cont. trial

Apr. 6—Entered order trial cont'd to May 9, at 2 P. M.

May 9—Entered record of trial—under advisement
Libelant files Trial Brief
Filed Stipulation of Facts
Respondent 10 days to file Ans. Brief
Libelant 10 days thereafter to file Reply Brief

May 21—Filed and entered Order re submission—Clerk to notify.

Jun. 23—Filed Stipulation re Briefs

Jun. 30— " Brief of Respondents

July 13— " Brief of Libelant

Dec. 7—Filed Memo. Decision (Decree for Libelant, to be settled on notice) (See also 7334)

1939

Mar. 2—Findings and Conclusions and Final Decree submitted to Court
Filed Costs Bill ($95)
Entered Exceptions, Claimant — Written Exceptions may be signed after Findings and Concl. and Decree signed

Mar. 7—Filed and Entered Findings of Fact and Conclusions of Law—Clmt's Exceptions allowed
Filed and Entered Decree, for libelant: $3,824.65, and int. $873.54, and costs, $95; Exceptions allowed

Apr. 4—Filed Petition for Appeal (Claimant) [161]

Apr. 4—Filed Notice of Present. Pet. for Appeal
Filed and entered Order granting Pet. for Appeal
Filed Notice of Appeal
" Stipulation Consolidating Appeal
" Stipulation re Appeal Bond and stay of Execution (release bond heretofore filed to serve in lieu of costs or supersedeas on appeal)
Filed Assignment of Errors

Apr. 5— " Praecipe for Apostles on Appeal
" Statement of Case (addressed to Circuit Court)—transmitted to C.C.A. with appeal record

May 4—To comparing and certifying Record on Appeal ($) [162]

[Title of District Court and Cause—No. 7334.]

DOCKET ENTRIES

1935

Jun. 5—Filed Libel in Rem
" Stipulation for Costs
" Appearance
" Praecipe
Issued Monition and Attachment

Jun. 7—Filed Claim of Ownership, by Aktieselskabet Borgestad
Filed Appearance
" Release Bond, Claimant ($5,500 Pac. Ind. Co.)
Issued Notice of Bonding to Marshal by Clerk
Filed U. S. Marshal's Return on Notice of Bonding
Filed Stipulation for Costs, by Claimant
" Marshal's Return on Monition and Attachment

Jun. 17—Filed Affidavit of Publication

1936

July 7—Entered order cause dismissed, Rule 48—Proctors notified

July 9—Entered Order, oral motion Libelant, Order of Dismissal vacated

1937

May 14—Filed Answer (and Affirmative Defense)

July 6—Entered order over Term

1938

Feb. 1—Trial Apr. 7

Apr. 6—Filed Stip. to cont. trial date

Entered order trial date cont'd to May 9, 2 P. M. (See 7331)

May 9—Entered record of trial,—under advisement.

Filed Libelant's Brief

" Stipulation of Facts

Respondent 10 days; Libelant 10 days more; (See 7331)

Filed Cost Bill ($85)

Jun. 21—Filed and entered Order re submission—Clerk to notify

Jun. 23—Filed Stipulation re Brief

Jun. 30— " Brief of Respondents (filed in 7331)

July 13— " Brief of Libelant (see 7331)

Dec. 7— " Memo. Ruling (with 7331)—Decree for libelant, to be settled on notice

1939

Mar. 2—Findings and Conclusions and Final Decree submitted to Court (See 7331)

Mar. 7—Filed and entered Findings of Fact and Conclusions of Law

Filed Exceptions (allowed)

Filed and entered Decree, for libelant: $4,631.71 and int. $1,038.83, and costs, $85

Filed Exceptions (allowed)

1939

Apr. 4—Filed Petition for Appeal (Claimant)

" Notice of Presentation [163]

" Stip. for Consol. Appeals (See 7331)

" Stip. as to appeal bond and stay (See 7331)

Filed Supplemental Stipulation for Value (Release bond heretofore filed is increased to $6,000)

Apr. 5—Filed Assignment of Errors

" Praecipe for Apostles on Appeal (See 7331)

" Statement (addressed to C.C.A.) (See 7331)

May 4—To comparing and certifying transcript of record on appeal. [164]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 7th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7331.]

MINUTE ORDER OF DISMISSAL

On this 7th day of July, 1936, on the Court's motion, It Is Ordered that this cause be and hereby is dismissed for want of prosecution, pursuant to Rule 48 of the Rules of Practice of this Court. The Clerk is directed to notify the proctors of record of this order. [165]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 7th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7334.]

MINUTE ORDER OF DISMISSAL

On this 7th day of July, 1936, on the Court's motion, It Is Ordered that this cause be and hereby is dismissed for want of prosecution, pursuant to Rule 48 of the Rules of Practice of this Court. The Clerk is directed to notify the proctors of record of this order. [166]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 9th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7331.]

MINUTE ORDER VACATING ORDER OF DISMISSAL

On this 9th day of July, 1936, on motion of John S. Robinson, one of the proctors for libelant herein, it is hereby Ordered that the Order of Dismissal for want of prosecution heretofore entered on July 7, 1936, be and hereby is vacated and set aside and this cause be and hereby is reinstated. [167]

Record of Proceedings:

At a regular session of the United States District Court for the Western District of Washington, held at Tacoma, in the Southern Division thereof on the 9th day of July, 1936, the Honorable Edward E. Cushman, U. S. District Judge presiding: among other proceedings had were the following, truly taken and correctly copied from the Journal Record of said Court as follows:

[Title of District Court and Cause—No. 7334.]

MINUTE ORDER VACATING ORDER OF DISMISSAL

On this 9th day of July, 1936, on motion of John S. Robinson, one of the proctors for libelant herein, it is hereby Ordered that the Order of Dismissal for want of prosecution heretofore entered on July 7, 1936, be and hereby is vacated and set aside and this cause be and hereby is reinstated. [168]

[Title of District Court and Cause—No. 7331.]

NOTICE OF APPEAL

To Signal Oil and Gas Company of California, a corporation, Libelant;

To Glenn J. Fairbrook and Fairbrook & Williams, its Proctors;

To the Honorable E. E. Cushman, Judge of the above entitled court, and Elmer Dover, its Clerk:

You, and each of you, will please take notice that Dampskibsselskabet Dannebrog, a corporation, claimant above named, hereby appeals unto the United States Circuit Court of Appeals for the Ninth Circuit from that certain final decree signed by the Honorable E. E. Cushman, Judge of the above entitled court, filed with the Clerk of said court, and entered in the above entitled cause upon

the 7th day of March, 1939, against said claimant and in favor of said libelant, hereby appealing from the whole of said final decree, and from each and every part thereof.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant Dampskibsselskabet Dannebrog, a corporation. [169]

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed April 4, 1939. [170]

[Title of District Court and Cause—No. 7334.]

NOTICE OF APPEAL

To Signal Oil and Gas Company of California, a corporation, Libelant;

To Glenn J. Fairbrook and Fairbrook & Williams, its Proctors;

To the Honorable E. E. Cushman, Judge of the above entitled court, and Elmer Dover, its Clerk:

You, and each of you, will please take notice that Aktieselskabet Borgestad, a corporation, claimant above named, hereby appeals unto the United States Circuit Court of Appeals for the Ninth Circuit from that certain final decree signed by the Honorable

E. E. Cushman, Judge of the above entitled court, filed with the Clerk of said court, and entered in the above entitled cause upon the 7th day of March, 1939, against said claimant and in favor of said libelant, hereby appealing from the whole of said final decree, and from each and every part thereof.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant Aktieselskabet Borgestad, a corporation. [171]

Due service of the foregoing Notice of Appeal upon this 25 day of March, 1939, is hereby acknowledged.

FAIRBROOK & WILLIAMS,

Proctors for Libelant Signal Oil and Gas Company of California, a corporation.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed April 4, 1939. [172]

[Title of District Court and Cause—No. 7331.]

PETITION FOR APPEAL

To the Honorable Judges of the Above Entitled Court:

Dampskibsselskabet Dannebrog, claimant in the above entitled cause, being aggrieved by that certain

final decree, signed, filed and entered in the above entitled cause on the 7th day of March, 1939, hereby claims an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby prays that such appeal may be allowed forthwith by order of the above entitled court, without issuance of citation, upon said claimant's notice of appeal and assignments of error, heretofore filed and duly presented herewith.

Dated this 16th day of March, 1939, at Seattle, Washington.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for said claimant above named.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [173]

[Title of District Court and Cause—No. 7334.]

PETITION FOR APPEAL

To the Honorable Judges of the Above Entitled Court:

Aktieselskabet Borgestad, claimant in the above entitled cause, being aggrieved by that certain final decree, signed, filed and entered in the above entitled cause on the 7th day of March, 1939, hereby claims an appeal therefrom to the United States

Circuit Court of Appeals for the Ninth Circuit, and hereby prays that such appeal may be allowed forthwith by order of the above entitled court, without issuance of citation, upon said claimant's notice of appeal and assignments of error, heretofore filed and duly presented herewith.

Dated this 16th day of March, 1939, at Seattle, Washington.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for said claimant above named.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [174]

[Title of District Court and Cause—No. 7331.]

NOTICE OF PRESENTATION

To Signal Oil and Gas Company of California, a corporation, Libelant above named, and to Fairbrook & Williams, its proctors:

You, and each of you, will please take notice that Dampskibsselskabet Dannebrog, a corporation, claimant above named, will present to the above entitled court, the Honorable E. E. Cushman presiding, its petition for appeal, notice of appeal, assignments of error, cost and supersedeas bond, and

proposed order allowing appeal, upon the 4th day of April, 1939, at the hour of 10 o'clock A. M., or as soon thereafter as hearing may be had.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for claimant Dampskibsselskabet Dannebrog.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [175]

[Title of District Court and Cause—No. 7334.]

NOTICE OF PRESENTATION

To Signal Oil and Gas Company of California, a corporation, Libelant above named, and to Fairbrook & Williams, its proctors:

You, and each of you, will please take notice that Aktieselskabet Borgestad, a corporation, claimant above named, will present to the above entitled court, the Honorable E. E. Cushman presiding, its petition for appeal, notice of appeal, assignments of error, cost and supersedeas bond, and proposed order allowing appeal, upon the 4th day of April,

1939, at the hour of 10 o'clock A. M., or as soon thereafter as hearing may be had.

Dated this 16 day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for claimant
Aktieselskabet Borgestad.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed March 25, 1939. [176]

[Title of District Court and Cause—No. 7334.]

SUPPLEMENTAL STIPULATION FOR VALUE

Whereas, in the above entitled cause release bond was executed on or about June 6, 1935, in the sum of $5500 by Vestindisk Handelskompagni (West Indian Trading Company) of Copenhagen, Denmark, as principal, and Pacific Indemnity Company, a corporation, as surety, and was filed in the above entitled cause on or about June 7, 1935, to effect release of the respondent motorship "Brand";

Whereas, by virtue of the accrual of interest and allowance of costs constituting a part of the judgment of the above entitled court in its decree entered in the above entitled cause on March 7, 1939, the amount of said bond has become inadequate;

Now, Therefore, the amount of said bond is hereby increased from the total sum of $5500 to the total

sum of $6000, all other provisions, terms and conditions of said bond to continue unmodified, it being understood that this Supplemental Stipulation for Value shall effect merely an increase in the [177] amount of said original release bond.

Dated at Seattle, Washington, this 16th day of March, 1939.

(Principal)
VESTINDISK HANDELSKOMPAGNI.
(West Indian Trading Company)
By HAYDEN, MERRITT, SUMMERS & BUCEY,
Its Proctors.

(Surety)
[Seal] PACIFIC INDEMNITY COMPANY
By MERRY ROSSMAN,
Its Attorney-in-fact.

United States of America,
State of Washington,
County of King—ss.

This is to certify that on this 16th day of March, 1939, before me, the undersigned notary public, personally appeared Merry Rossman, to me known to be the attorney-in-fact of Pacific Indemnity Company, the corporation that executed the within and foregoing Stipulation for Value, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein

mentioned, and on oath stated that he was authorized to execute the same as attorney-in-fact, and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof, I have hereunto set my hand and official seal the day and year in this certificate first above written.

[Seal] LANE SUMMERS,
Notary Public in and for the State of Washington, residing at Seattle.

The foregoing Supplemental Stipulation for Value is hereby approved.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

[Endorsed]: Filed Apr. 4, 1939. [178]

[Title of District Court and Cause—No. 7331.]

ASSIGNMENTS OF ERROR

Claimant above named hereby respectfully assigns errors by the United States District Court for the Western District of Washington, Southern Division, in respect to its memorandum decision filed December 7, 1938, and in respect to its findings of fact, conclusions of law, and decree, signed, filed and entered March 7, 1939, as follows:

(1) The court erred in its said memorandum decision by holding that the stipulated facts showed

that the fuel oil was furnished upon the credit of the vessel, and resulted in the creation of a maritime lien.

(2) The court erred in its said memorandum decision by holding that the collateral pledge agreement, accepted by libelant as pledgee from the charterer of the respondent vessel as pledgor, did not constitute a waiver of the maritime lien, if any had been previously created.

(3) The court erred in its said memorandum decision by holding that libelant's agreement to refrain from enforcing [179] payment from the charterer of the respondent vessel prior to September 1, 1935, did not constitute a waiver of the maritime lien, if any had been previously created.

(4) The court erred in its said memorandum decision by rejecting and denying claimant's partial defense to the effect that the fuel oil furnished on or about May 14-15, 1934, at Astoria, Oregon, was not a lienable necessity when ordered and received, because it was not an essential to the voyage then contemplated by the respondent vessel, but was desired by the charterer merely to comply with its charter party obligations.

(5) The court erred in its said memorandum decision by directing a decree in favor of libelant, with interest and costs.

(6) The court erred in its said findings of fact and its said conclusions of law by holding that fuel oil of the value of $3824.65, furnished by libelant to the respondent vessel on or about May 14-15,

1934, was furnished upon the credit of said vessel, and that a maritime lien was created therefor.

(7) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the fuel oil was furnished by libelant to the respondent vessel solely upon the personal credit of the charterer of said vessel, and that no maritime lien was created therefor.

(8) The court erred in its said findings of fact and its said conclusions of law by holding that the maritime lien, if any, had not been waived by libelant.

(9) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the maritime lien, if any, had been waived by libelant. [180]

(10) The court erred in its said findings of fact and its said conclusions of law by holding that the fuel oil furnished to the respondent vessel was a necessity for the contemplated voyage.

(11) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the fuel oil furnished to the respondent vessel was not a lienable necessary, since when ordered and received it was not essential to the voyage then contemplated, but was desired by the charterer merely to comply with its charter party obligations.

(12) The court erred in its said findings of fact and its said conclusions of law by holding that libelant was entitled to a decree in its favor.

(13) The court erred in its said findings of fact and its said conclusions of law by failing to hold that decree should be entered against libelant dismissing the libel.

(14) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the general contract for the sale and purchase of fuel oil between the libelant and the charterer of the respondent vessel, no maritime lien was contemplated or could arise.

(15) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the charter party covering the respondent vessel at the time fuel oil was furnished by libelant, the charterer possessed no power or authority to pledge the credit of the vessel or to create a maritime lien against the same. [181]

(16) The court erred in its said decree by holding that libelant had a maritime lien against the respondent vessel, and by granting judgment in favor of libelant, foreclosing such lien in the sum of $3824.65, and allowing interest and costs thereon.

(17) The court erred in its said decree by failing to hold that libelant had no maritime lien against the respondent vessel, and by failing to dismiss the libel, against libelant and in favor of claimant, with allowance of claimant's costs.

Dated at Seattle, this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for Claimant above named.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 4, 1939. [182]

[Title of District Court and Cause—No. 7334.]

ASSIGNMENTS OF ERROR

Claimant above named hereby respectfully assigns errors by the United States District Court for the Western District of Washington, Southern Division, in respect to its memorandum decision filed December 7, 1938, and in respect to its findings of fact, conclusions of law, and decree, signed, filed and entered March 7, 1939, as follows:

(1) The court erred in its said memorandum decision by holding that the stipulated facts showed that the fuel oil was furnished upon the credit of the vessel, and resulted in the creation of a maritime lien.

(2) The court erred in its said memorandum decision by holding that the collateral pledge agreement, accepted by libelant as pledgee from the charterer of the respondent vessel as pledgor, did not constitute a waiver of the maritime lien, if any had been previously created.

(3) The court erred in its said memorandum decision by holding that libelant's agreement to re-

frain from enforcing [183] payment from the charterer of the respondent vessel prior to September 1, 1935, did not constitute a waiver of the maritime lien, if any had been previously created.

(4) The court erred in its said memorandum decision by directing a decree in favor of libelant, with interest and costs.

(5) The court erred in its said findings of fact and its said conclusions of law by holding that fuel oil of the value of $4631.71, furnished by libelant to the respondent vessel, was so furnished upon the credit of said vessel, and that a maritime lien was created therefor.

(6) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the fuel oil was furnished by libelant to the respondent vessel solely upon the personal credit of the charterer of said vessel, and that no maritime lien was created therefor.

(7) The court erred in its said findings of fact and its said conclusions of law by holding that the maritime lien, if any, had not been waived by libelant.

(8) The court erred in its said findings of fact and its said conclusions of law by failing to hold that the maritime lien, if any, had been waived by libelant.

(9) The court erred in its said findings of fact and its said conclusions of law by holding that the fuel oil furnished to the respondent vessel was a necessity for the contemplated voyage.

(10) The court erred in its said findings of fact and its said conclusions of law by holding that libelant was entitled to a decree in its favor. [184]

(11) The court erred in its said findings of fact and its said conclusions of law by failing to hold that decree should be entered against libelant, dismissing the libel.

(12) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the general contract for the sale and purchase of fuel oil between the libelant and the charterer of the respondent vessel, no maritime lien was contemplated or could arise.

(13) The court erred in its said memorandum decision and in its said findings of fact and its said conclusions of law by failing to hold that under the terms of the charter party covering the respondent vessel at the time fuel oil was furnished by libelant, the charterer possessed no power or authority to pledge the credit of the vessel or to create a maritime lien against the same.

(14) The court erred in its said decree by holding that libelant had a maritime lien against the respondent vessel, and by granting a judgment in favor of libelant, foreclosing such lien in the sum of $4631.71, and allowing interest and costs thereon.

(15) The court erred in its said decree by failing to hold that libelant had no maritime lien against the respondent vessel, and by failing to dismiss the libel, against libelant and in favor of claimant, with allowance of claimant's costs.

Dated at Seattle, this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Claimant above named. [185]

Due service of the foregoing Assignments of Error, by receipt of copy thereof, is hereby acknowledged this 25 day of March, 1939.

FAIRBROOK & WILLIAMS,

Proctors for Libelant.

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed Apr. 5, 1939. [186]

[Title of District Court and Cause—No. 7331.]

ORDER GRANTING PETITION FOR APPEAL

The above entitled cause having duly and regularly come on for hearing before the above entitled court, the undersigned Judge presiding, upon petition for appeal of claimant Dampskibsselskabet Dannebrog, presented to this court with said claimant's notice of appeal, assignments of error, and stipulation in lieu of cost and supersedeas bond on appeal, all having heretofore been filed, and the court having considered the same;

Now, therefore, it is hereby ordered and adjudged:

(1) That said petition for appeal is granted as prayed, appeal being allowed in the above entitled cause without issuance of citation;

(2) That National Surety Corporation, a corporation, surety upon claimant's stipulation for costs, and surety upon claimant's release bond, is not a necessary party appellant to such appeal;

(3) That stipulation signed by libelant, accepting claimant's release bond in the sum of $5000 in lieu of cost and supersedeas bond on appeal, is approved, claimant being allowed to appeal upon such stipulation without filing additional security; [187]

(4) That stay of execution, in conformity with libelant's stipulation, is granted.

Done at Tacoma, Washington, this 5th day of April, 1939.

EDWARD E. CUSHMAN,
United States District Judge.

The foregoing order is hereby approved this 25 day of March, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

Presented by:

ERNEST FALK
Of Proctors for Claimant.

[Endorsed]: Filed Apr. 5, 1939. [188]

[Title of District Court and Cause—No. 7334.]

ORDER GRANTING PETITION FOR APPEAL

The above entitled cause having duly and regularly come on for hearing before the above entitled court, the undersigned Judge presiding, upon pe-

tition for appeal of claimant Aktieselskabet Borgestad, presented to this court with said claimant's notice of appeal, assignments of error, and stipulation in lieu of cost and supersedeas bond on appeal, all having heretofore been filed, and the court having considered the same;

Now, therefore, it is hereby ordered and adjudged:

(1) That said petition for appeal is granted as prayed, appeal being allowed in the above entitled cause without issuance of citation;

(2) That Pacific Indemnity Company, a corporation, surety upon claimant's stipulation for costs, and surety upon claimant's release bond, is not a necessary party appellant to such appeal;

(3) That stipulation signed by libelant, accepting claimant's release bond in the sum of $5500, and claimant's supplemental stipulation for value for the additional sum of [189] $500, in lieu of cost and supersedeas bond on appeal, is approved, claimant being allowed to appeal upon such stipulation without filing additional security;

(4) That stay of execution, in conformity with libelant's stipulation, is granted.

Done at Tacoma, Washington, this 5th day of April, 1939.

EDWARD E. CUSHMAN,
United States District Judge.

The foregoing order is hereby approved this 25 day of March, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

Presented by:

ERNEST FALK

Of Proctors for Claimant.

[Endorsed]: Filed Apr. 5, 1939. [190]

[Title of District Court and Causes—Consolidated.]

STIPULATION CONSOLIDATING APPEALS

By and between libelant above named and claimants above named, it is hereby stipulated that the appeal in the cause against the respondent motorship "Stjerneborg", and the appeal in the cause against the respondent motorship "Brand" may be consolidated for reasons of economy and convenience; that [191] claimants, jointly, may file a single praecipe for transcript of record; that claimants may cause to be prepared but a single transcript of record for apostles on appeal, and that both causes may be presented to the United States Circuit Court of Appeals for the Ninth Circuit as a single appeal, claimants (as appellants) filing only one original brief, libelant (as appellee) filing only one answering brief, and claimants (as appellants) filing only one reply brief, if any.

FAIRBROOK & WILLIAMS,

Proctors for Libelants.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Claimants.

[Endorsed]: Filed Apr. 4, 1939. 192]

[Title of District Court and Causes—Consolidated.]

STIPULATION AS TO APPEAL BOND AND STAY OF EXECUTION

It is hereby stipulated by and between libelant above named and claimants above named that in the above entitled causes claimants above named need secure and file no cost or supersedeas bond on appeal; that in the above entitled cause against the motorship "Brand" release bond in the sum of $5500, filed on or about June 7, 1935, coupled with Supplemental Stipulation for Value in the additional sum of $500, filed on or about [193] April 4th, 1939, and in the above entitled cause against the motorship "Stjerneborg" the release bond in the sum of $5000, filed on or about May 16, 1935, shall serve to secure [illegible]ant in lieu of cost and supersedeas bond on appeal; and that without other security, execution upon final decrees in both of the above entitled causes shall be stayed during the time within which claimants are by law allowed to appeal from the decrees of the above entitled court in said causes, and (providing such appeals shall have been perfected) shall thereafter be further stayed until the ultimate determination thereof.

Dated this 16th day of March, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Libelant.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for Claimants.

[Endorsed]: Filed April 4, 1939. [194]

[Title of District Court and Causes—Consolidated.]

PRAECIPE FOR APOSTLES

To the Clerk of the Above Entitled Court:

Utilizing transcript filed herewith, you are hereby requested to prepare in the above entitled cause apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, supplementing and comparing such transcript to the extent necessary to make index and certify full, true and complete apostles on appeal, as required by Rule 3 of the Admiralty Rules of that court, containing the following: [195]

(1) Caption showing proper style of the court and showing titles and numbers of the causes consolidated;

(2) Introductory statement;

(3) Property attached and proceedings relative thereto;

(4) Pleadings, together with exhibits, interrogatories, answers to interrogatories, stipulations, orders, and other proceedings prior to trial;

(5) Clerk's minutes of various court orders, and all entries or notations on clerk's docket in the causes;

(6) Stipulation of facts upon which the causes were submitted to trial, and all other record of trial;

(7) The court's decision, filed December 7, 1938;

(8) Findings of Fact and Conclusions of Law, filed March 7, 1939;

(9 Claimants' Exceptions to Findings of Fact and Conclusions of Law, filed March 7, 1939;

(10) Final decree, filed March 7, 1939;

(11) Claimants' Exceptions to Final Decree, filed March 7, 1939;

(12) Cost bills;

(13). All notices, motions, petitions, orders, stipulations and other papers and proceedings related to the appeal;

(14) Endorsements or notations of dates of service and filing of all papers included within said apostles;

(15) All other motions, stipulations, orders, and other matters material to the appeal, filed subsequent hereto;

(16) This praecipe.

Dated this 16th day of March, 1939.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Claimants. [196]

[Service acknowledged March 25, 1939.]

[Endorsed]: Filed April 5, 1939. [197]

[Title of District Court and Causes—Consolidated.]

CERTIFICATE OF CLERK OF THE UNITED STATES DISTRICT COURT TO APOSTLES ON APPEAL

United States of America,
Western District of Washington,
Southern Division—ss.

I, Elmer Dover, Clerk of the United States District Court for the Western District of Washington, do hereby certify: [198]

(1) That the foregoing typewritten transcript (consisting of pages numbered consecutively from 1 to 200, both inclusive) constitutes the apostles on appeal from final decree entered on the 7th day of March, 1939, in the above entitled admiralty cause entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship "Stjerneborg", Respondent, Dampskibsselskabet Dannebrog, a corporation, Claimant", Number 7331, wherein Dampskibsselskabet Dannebrog, a corporation, is appellant, and also in the above entitled admiralty cause, entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship 'Brand', Respondent, Aktieselskabet Borgestad, Claimant", Number 7334, wherein Aktieselskabet Borgestad, a corporation, is appellant, in both of which Signal Oil and Gas Company of California is appellee.

(2) That said apostles contains all of the pleadings, bonds, stipulations, orders, minutes, "Stipu-

lation of Facts", and all other papers, proceedings and matters on file and of record in my office in both of said above entitled causes, required to be included therein by stipulation of proctors, by praecipe of appellants, and by applicable rules of the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to which said apostles have been made.

(3) That a full and correct statement of all expenses, costs, fees and charges incurred in my office by or for said appellants for transcription, comparison and certification of said apostles is the following: [199]

Clerk's fees (Act of February 11, 1925) for transcription of 30 folios at 15¢ per folio (appellants having prepared and supplied transcript of all the record, excepting only transcript of the clerk's minutes and docket entries). And also several other stipulations and orders	$ 4.50
Clerk's fees (Act of February 11, 1925) for comparison of 367 folios at 5¢ per folio	$18.35
Appeal fee (Sec. 5 of the Act of February 11, 1925) for appellant, Dampskibsselskabet Dannebrog, a corporation, in the cause entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship 'Stjerneborg', Respondent, Dampskibsselskabet Dannebrog, a corporation, Claimant"	5.00

Appeal fee (Sec. 5 of the Act of February 11, 1925) for appellant Aktieselskabet Borgestad, a corporation, in the cause entitled "Signal Oil and Gas Company of California, a corporation, Libelant, vs. Motorship 'Brand', Respondent, Aktieselskabet Borgestad, a corporation, Claimant"	5.00
Certificate of Clerk to Apostles	.50
	33.35

(4) That said sum of $33.35 has been paid to me by proctors for said appellants.

In witness whereof, I have hereunto set my hand and affixed the official seal of said District Court at Tacoma in said district this 4th day of May, 1939.

[Seal] ELMER DOVER,

Clerk of the United States District Court for the Western District of Washington,

By R. B. ALLEN,

Deputy. [200]

[Endorsed]: No. 9182. United States Circuit Court of Appeals for the Ninth Circuit. Dampskibsselskabet Dannebrog, a corporation, as Claimant of the Motorship "Stjerneborg", Appellant, vs. Signal Oil and Gas Company of California, a corporation, Appellee. Aktieselskabet [illegible]gestad, a corporation, as Claimant of the Motorship "Brand", Appellant, vs. Signal Oil and Gas Company of California, a corporation, Appellee. Apostles on Appeals. Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

Filed May 8, 1939.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit

No. 9182

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee.

vs.

Motorship "STJERNEBORG",

Respondent,

DAMPSKIBSSELSKABET DANNEBROG, a corporation,

Claimant-Appellant.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Libelant-Appellee,

vs.

Motorship "BRAND",

Respondent,

AKTIESELSKABET BORGESTAD, a corporation,

Claimant.

STATEMENT OF POINTS

1. Appellants upon the appeal in the above entitled cause intend to rely upon the following points:

(1) No maritime lien was created.

(a) The terms of the charter parties covering the respondent vessels obligated the charterer to pay for fuel oil, and did not authorize or empower the charterer, upon whose order appellee supplied fuel oil, to pledge the credit of the respondent vessels;

(b) The fuel oil was sold to the charterer and was delivered to the respondent vessels by appellee under its general sales contract with the charterer, not upon the credit of the vessels themselves, but upon the personal credit of the charterer.

(2) Maritime lien, if any, was waived:

(a) By the terms of the appellee's general contract with the charterer for the future sale of fuel oil;

(b) By appellee's acceptance, as pledgee, from the charterer, as pledgor, of collateral pledge agreement covering the charterer's assets;

(c) By appellee's agreement to refrain, along with other creditors, from enforcing against the charterer its personal obligation to pay for fuel oil furnished the respondent vessels.

(3) Fuel oil was not a necessity for the contemplated voyages of the respondent vessels, but was required by the charterer to meet its personal obligations under the charter parties.

(4) Considering appellee's delay after instituting suit, resulting in dismissal for want of prosecution, no interest should have been allowed to appellee.

(5) Each and all of the assignments of error, incorporated herein by reference.

II. Appellants designate the entire transcript of record as appropriate for printing to serve as the basis for the presentation to the above entitled court of the foregoing points.

HAYDEN, MERRITT, SUMMERS & BUCEY,

Proctors for Appellants.

[Receipt of copy acknowledged May 29, 1939.]

[Endorsed]: Filed May 31, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION AS TO PRINTING

By and between appellee above named and appellants above named, it is hereby stipulated that in printing the typewritten transcript of record on appeal it shall not be necessary for the Clerk to cause to be printed: (1) titles, endorsements by the Clerk of the lower court, or acknowledgments of service, except only in so far as necessary to identify the various papers and to show the dates when the same were served and filed; (2) stipulations and orders relative to continuances or briefs; and (3) stipulations for costs.

Dated this 12th day of May, 1939.

FAIRBROOK & WILLIAMS,
Proctors for Appellee.

HAYDEN, MERRITT, SUMMERS & BUCEY,
Proctors for Appellants.

[Endorsed]: Filed May 15, 1939. Paul P. O'Brien, Clerk.

No. 9182

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

DAMPSKIBSSELSKABET DANNEBROG, a corporation, as Claimant of the Motorship "STJERNEBORG",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

AKTIESELSKABET BORGESTAD, a corporation, as Claimant of the Motorship "BRAND",

Appellant,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Appellee.

Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, September 15, 1939.

Before: Wilbur, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals in above cause argued by Mr. Lane Summers, proctor for appellants, and by Mr. Glenn J. Fairbrook, proctor for appellee, and submitted to the court for consideration and decision, with leave to appellants to file reply brief in 5 days.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, October 26, 1939.

Before: Wilbur, Haney and Healy,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes

of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

OPINION

Before: Wilbur, Haney and Healy,
Circuit Judges.

Haney, Circuit Judge.

Appeal is taken from decrees in admiralty enforcing liens on two motorships for oil furnished such vessels by appellee.

In September, 1932, appellee entered into a contract with Anglo Canadian Shipping Co., Ltd., by which appellee agreed to sell fuel oil to any vessel which Anglo might "own, charter, operate or be agents for". On May 19, 1933, such contract was modified "to include the fuel oil requirements of any and all vessels owned, chartered and or operated" by W. L. Comyn & Sons, hereinafter called Comyn. Subsequently, and before the ships in question were chartered by Comyn, the contract was further modified and required appellee to bill Comyn direct for oil used by the latter.

Comyn chartered for a specified time the motorships Brand and Stjerneborg, the charter parties requiring Comyn to provide and pay for all oil.

Comyn chartered the "Stjerneborg" on January 27, 1934, and the "Brand" on March 8, 1934. On April 26, 1934, appellee delivered fuel oil to the "Brand" at Point Wells, Washington, and on May 11, 1934, made a further delivery to the "Brand" at San Pedro, California. All deliveries were made on the orders of Comyn. Appellee issued invoices for these deliveries, totalling $4,631.71 to the "Brand and Owners" in care of Comyn. On May 15, 1934, appellee delivered fuel oil to the "Sterneborg" at Astoria, Oregon, and issued its invoice for $3,824.63 to the "Stjerneborg and Owners" in care of Comyn.

In July, 1934, Comyn by a pledge, created a lien on certain securities in favor of appellee, which lien was second to one held by a Seattle bank. Thereafter appellee waived its lien on the securities by permitting the Seattle bank to obtain a paramount lien on the securities as security for a subsequent loan of $900. Upon sale of the securities, appellee released its claim to $1,474.96 of the proceeds to which it was entitled, and signed a Creditors' Agreement granting Comyn a year's extension of time to meet its obligations. In April, 1935, Comyn released appellee from such Creditors' Agreement.

The pledge agreement contained a provision that it would not preclude appellee from collecting any obligation without resorting to the securities pledged, and that such pledge agreement should not constitute "any release or waiver of any lien" ap-

pellee might have against the vessels. The Creditors' Agreement contained a provision that the execution thereof by appellee should not constitute "any release or waiver of any lien or the right to a lien" which appellee might have.

After delivery of fuel oil to it, the "Brand" left for Europe. Upon its return, it was docked at Los Angeles for one day, and then left for Vancouver, B. C., and thence to the Orient. Upon its return, it docked at certain points in California and Washington from March 28, 1935 to April 13, 1935. It then left for the Orient and upon its return was libelled in this cause on June 5, 1935.

After delivery of the fuel oil to it, the "Stjerneborg" left for Australia and other foreign countries, and upon its return, was docked at various points in California, Washington and Oregon from December 30, 1934 to January 14, 1935. It then left for the Orient, and upon its return was libelled in the instant cause on May 11, 1935.

The answers filed by the owners of the vessels alleged that (1) the owner and the vessels were not liable because the oil was not furnished upon the order of the owner or anyone authorized by it; (2) the oil was furnished upon the credit of Conyn and not that of the vessels; (3) the liens, if any, were waived by appellee's release of its claims upon the securities and proceeds thereof, under the pledge, and by execution of the Creditors' Agreement. The causes were consolidated for trial.

The facts above mentioned being stipulated, the Court adopted such stipulation as its findings and

concluded that the fuel oil delivered was necessary for the voyages contemplated, was furnished upon the credit of the vessels, that liens were created and not waived. A decree in favor of appellee was entered in each cause, with interest, from which this appeal was taken.

46 USCA §971 provides:

> "Any person furnishing * * * supplies * * * to any vessel, whether foreign or domestic, upon the order * * * of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

46 USCA §972 provides:

> "The following persons shall be presumed to have authority from the owner to procure * * * supplies. * * * any person to whom the management of the vessel at the port of supply is intrusted * * *"

First. Appellants contend that no lien arose because "appellee did, by the terms of its blanket contract and by its course of dealings thereunder, rely solely upon the individual credit of" Comyn, and that there is nothing to show that Comyn "was ever granted authority to bind the vessels by imposing a lien thereon". Marshall & Co. v. "Pres. Arthur", 279 U.S. 564 is heavily relied on, but we think it is not applicable. It was there held that

> "* * * the libellant, having made specific contracts for an express security, instead of resting on the lien which the law would otherwise give, must rely on the contracts it made for itself, and cannot now, in a change of circumstances, resort to the lien it would have had in the absence of the special agreements; and that by taking other and different security, upon which it relied, and which it still retains, without stipulating for the retention of the lien, it has waived the lien which it otherwise would have had."

The controlling factor in that case was that at the time of delivery of coal libellant insisted upon and obtained security for the amount owing it. A like fact is absent here.

The instant case is controlled by The Portland, 9 Cir., 273 F. 401 and The Golden Gate, 9 Cir., 52 F(2d) 397, cert. den. 284 U.S. 682), which hold adversely to appellants' contentions. Appellants ask us to again consider the contentions made implying that the cases mentioned should be overruled. The rule of The Portland, supra, was re-examined in the Golden Gate, supra, and again in The Luddeo 41, 9 Cir., 66 F(2d) 997. No compelling reason requires re-examination now. The owners are not without a means of protection. 46 USCA §973.

Second. Appellants further contend that if a lien arose it was waived by appellee because it entered the creditor's agreement and accepted security by the pledge agreement. It will be recalled

that by both agreements the rights to liens were retained. Appellee had the right to rely on the credit of both the vessels and the charterer. Piedmont Coal Co. v. Seaboard Fisheries Co., 254 U.S. 1, 10. There is nothing inconsistent in appellee's actions to show that it was renouncing the liens, but in fact retention thereof was specifically provided for. We think appellee did not waive its rights to the liens. See: El Amigo, 5 Cir., 285 F. 868: The Golden Gate, supra, 400. In Marshall & Co. v. "Pres. Arthur", supra, 572 and in The City of Seattle, 2 Cir., 61 F(2d) 763, 764, there were waivers of the liens, but in both there was no reservation of the lien. The inference is that had there been such a reservation, as here, there would have been no waivers.

Third. Appellants also contend that "in admiralty interest may be properly disallowed or reduced because of unusual delay in the prosecution of an admiralty cause". Appellants concede that they are responsible for a part of the delay, but that "there is a subsfantial excess of delay justly chargeable to appellee." The record does not disclose which of the parties caused the delay. The allowance of interest is discretionary. The Albert Dumois, 177 U.S. 240, 255. In the absence of anything in the record disclosing who may be blamed for the delay, we are not warranted in holding that the trial court abused its discretion.

Affirmed.

[Endorsed]: Opinion. Filed Oct. 26, 1939. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9182

DAMPSKIBSSELSKABET DANNEBROG, etc.,
Appellant,

vs.

SIGNAL OIL & GAS COMPANY OF CALIFORNIA, etc.,
Appellee,

and

AKTIESELSKABET BORGESTAD, etc.,
Appellant,

vs.

SIGNAL OIL & GAS COMPANY OF CALIFORNIA, etc.,
Appellee.

DECREE

Appeals from the District Court of the United States for the Western District of Washington, Southern Division.

This Cause came on to be heard on the Apostles on Appeals from the District Court of the United States for the Western District of Washington, Southern Division, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the decrees of the said District Court in this cause

be, and hereby are affirmed, with costs in favor of the appellee and against the appellants.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellants for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Oct. 26, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER STAYING MANDATE

On application of appellants, based upon stipulations on file and additional security furnished to appellee by appellants, it is hereby Ordered that issuance of mandate of this court under Rule 28 in the above entitled consolidated causes be, and it hereby is, stayed until the expiration of the time allowed by law to appellants within which to file with the Clerk of the Supreme Court of the United States a petition for writ of certiorari in the above entitled consolidated causes; and, in the event that such petition be filed within such time, then until such petition be denied by order of the Supreme Court of the United States; and, in the event such petition be granted by the Supreme Court of the United States, then until final determination of the above entitled consolidated causes by that court.

Dated this 9th day of December, 1939.

CURTIS D. WILBUR

Senior U. S. Circuit Judge

Approved by:

GLENN J. FAIRBROOK

Of Proctors for Appellee

LANE SUMMERS

Of Proctors for Appellants.

[Endorsed]: Filed Dec. 9, 1939. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred and thirty (230) pages, numbered from and including 1 to and including 230, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of December, 1939.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 26, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILED OCT

(9)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 602

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Motorship "STJERNEBORG", and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "BRAND",

Petitioners,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Respondent.

PETITION

For a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, and

BRIEF IN SUPPORT THEREOF

LANE SUMMERS,
Proctor for Petitioners,
Central Building,
Seattle, Washington.

W. H. HAYDEN,
F. T. MERRELL,
C. H. BUCK,
Of Counsel,
Central Building,
Seattle, Washington.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. .....

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Motorship "STJERNEBORG", and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "BRAND",

Petitioners,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Respondent.

PETITION

For a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, and

BRIEF IN SUPPORT THEREOF

LANE SUMMERS,
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Central Building,
Seattle, Washington.

W. H. HAYDEN,
F. T. MERRITT,
G. H. BYCEY,
Of Counsel,
Central Building,
Seattle, Washington.

THE COURT PRESS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. .....

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Motorship "STJERNEBORG", and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "BRAND",

Petitioners,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

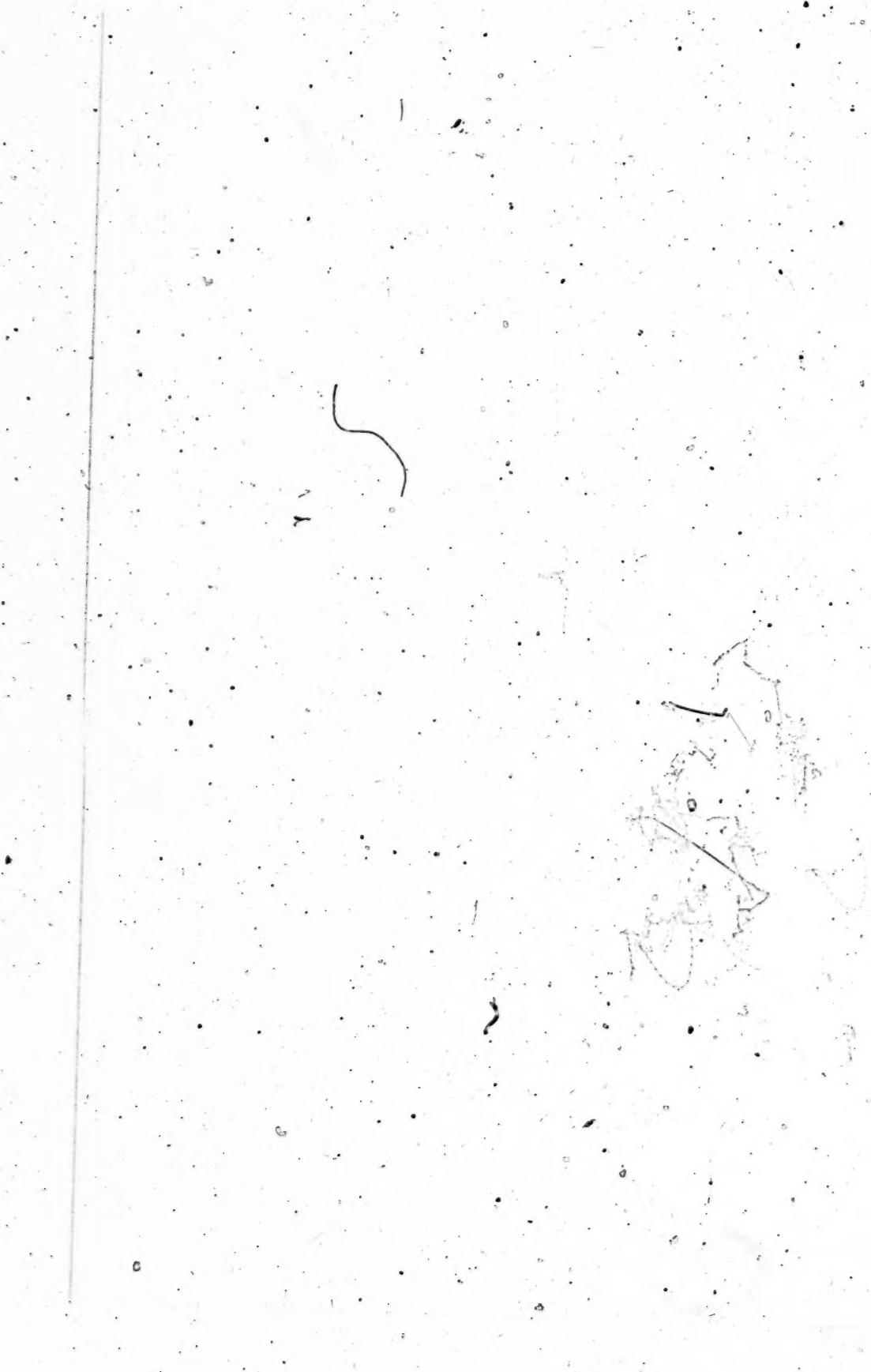
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Ninth Circuit

LANE SUMMERS,
Proctor for Petitioners,
Central Building,
Seattle, Washington.

W. H. HAYDEN,
F. T. MERRITT,
G. H. BUCEY,
Of Counsel,
Central Building,
Seattle, Washington.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. .....

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Motorship "STJERNEBORG", and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "BRAND",

Petitioners,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Ninth Circuit

TO THE HONORABLE CHARLES E. HUGHES, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

PRAYER

The petitioners, DAMPSKIBSSELSKABET DANNEBROG, a corporation, and AKTIESELSKABET BORGESTAD, a corporation, pray that a writ of certiorari be issued to review the decree entered October 26, 1939, by the

United States Circuit Court of Appeals for the Ninth Circuit in the above entitled consolidated cause (R. 228).

DECREE BELOW

Such decree of the United States Circuit Court of Appeals for the Ninth Circuit affirmed decrees of the District Court of the United States for the Western District of Washington, Southern Division, in favor of respondent Signal Oil and Gas Company of California, a corporation, granting judgment and foreclosing a maritime lien against the motorship "Stjerneborg", owned by the petitioner Dampskibsselskabet Dannebrog, a corporation, and against the motorship "Brand", owned by the petitioner Aktieselskabet Borgestad (R. 228, 170-174).

QUESTION PRESENTED

Whether, under the maritime lien provisions of section 30 of the Merchant Marine Act of June 5, 1920 (46 U. S. Code, 971-975) a maritime lien exists against a vessel in favor of a supplier of fuel oil ordered solely by a buyer, who was itself obligated by the vessel's charter party to "provide and pay for all" fuel oil, when such supplier, before the execution of said charter party, had previously become legally bound by contract to sell to such buyer on its personal credit all fuel oil required for "any and all vessels owned, chartered and or operated" subsequently by the buyer.

SUMMARY OF FACTS

In September, 1932, the respondent Signal Oil and Gas Company, as seller, entered into a formal blanket long-term contract (Ex. A; R. 45-53) with Anglo

Canadian Shipping Co. Ltd., as buyer, for the future sale and purchase of fuel oil for all vessels "which the buyer may own, charter, operate or be agents for" (R. 31).

In May, 1933, said contract was modified by letters to permit W. L. Comyn & Sons, a corporation, as buyer, to purchase fuel oil for "any and all vessels owned, chartered, and/or operated" by it. Under said contract as modified the respondent Signal Oil and Gas Company became obligated to sell, and W. L. Comyn & Sons became entitled to buy upon its own order and upon its own credit (R. 32, 33, 58, 59, 60, 61, 62).

Said contract, as originally executed and as thereafter modified, used no language which stated or implied that the respondent in obligating itself to future sales and deliveries of fuel oil was relying on the credit of any vessel or upon a maritime lien (R. 45-53, 58-62); and said contract, as the respondent's exclusive protection against non-payment for past credit deliveries, provided that the respondent as to further deliveries might require the buyer to pay cash or might suspend deliveries pending full payment, or might terminate the contract (R. 49).

Both before and after said contract was modified to constitute W. L. Comyn & Sons as a buyer thereunder, the respondent either actually knew, or easily could have ascertained, that W. L. Comyn & Sons was in business not as a vessel owner, but merely as an operator of vessels, sometimes for owner's account and sometimes for charterer's account (R. 41).

Later, W. L. Comyn & Sons became the charterer of the motorship "Stjerneborg" in January, 1934, and of the motorship "Brand" in March, 1934 (R. 114, 126). Both charter parties obligated the

charterer to "provide and pay for all" fuel oil (R. 40, 116; 128).

Subsequently, under said contract as modified, the respondent filled two orders by W. L. Comyn & Sons for delivery to the "Brand" of fuel oil upon April 26, 1934, and upon May 11, 1934 (R. 37, 38); and also, under said contract as modified, the respondent filled another order by W. L. Comyn & Sons for delivery to the "Stjerneborg" of fuel oil upon May 15, 1934 (R. 38, 39). Such orders were made solely by W. L. Comyn & Sons, which was related to said vessels only as charterer under said charter parties (R. 39, 40).

W. L. Comyn & Sons, due to its insolvency, never made payment to respondent for fuel oil so furnished (R. 41).

As a result, respondent asserted a maritime lien against the "Stjerneborg" by libel in rem filed May 11, 1935, and against the "Brand" by similar libel filed June 5, 1935, (R. 4-10). The vessels after seizure upon process were duly released on bonds by the petitioners as owners thereof (R. 10-19).

By their answers the petitioners appropriately denied the allegations of said libels, and affirmatively alleged in defense that no maritime lien existed (1) because under all the terms of said contract the fuel oil was supplied upon the sole credit of W. L. Comyn & Sons, and not upon the credit of the vessels, and, (2) because under said charter party W. L. Comyn & Sons was obligated to "provide and pay for all" fuel oil, and hence was without authority to pledge the credit of the vessels (R. 21, 22, 27, 28).

Because of the similarity of facts involved and the identity of questions presented, the two causes were consolidated for trial and later for appeal (R. 31, 207).

RULINGS OF LOWER COURTS

On the trial the facts were submitted by stipulation in lieu of evidence (R. 31-153).

In the District Court as to the two questions tendered for review here, the memorandum decision merely said: "The stipulated facts show that the oil was furnished upon the credit of the vessels and that, in consequence, the asserted liens were created" (R. 157).

The appellate court, after reciting briefly the contentions of petitioners that a maritime lien did not exist because the fuel oil contract disclosed respondent's intention not to rely upon the credit of the vessels but to rely solely upon the credit of W. L. Comyn & Sons, and because the charter party failed to confer upon W. L. Comyn & Sons authority to pledge the credit of the vessels, ruled to the contrary (R. 225, 226). The Circuit Court of Appeals considered that the case of the *President Arthur*, 279 U. S. 564, was not applicable, and concluded that its own former decisions in *The Portland*, 273 Fed. 401, and in *The Golden Gate*, 52 Fed. (2d) 397, were controlling (R. 225, 226).

Both the lower court and the higher court seem to commingle and confuse petitioner's contentions—one as to credit arising out of the contract; the other as to authority arising out of the charter party.

REASONS FOR GRANTING WRIT

1. Conflict of Decisions Between Circuit Courts of Appeals

The decision of the Circuit Court of Appeals for the Ninth Circuit in this case is in conflict with the

decisions of the Circuit Court of Appeals for the Fifth Circuit in *The Cratheus*, 263 Fed. 693 (Cert. denied, 253 U. S. 492); and in *Pensacola S. Co.* v. *U. S. Shipping Board*, 277 Fed. 889.

In *The Cratheus, supra* (pp. 693, 694), the supplier "was under written contract with the charterers to furnish 'all the bunker coal required by them * * * for steamers of which they are owners, charterers, or time charterers, or in which they are otherwise interested'"; and the charter party required the charterers "to provide and pay for all coal" and "contained nothing on the subject of the charterers creating or discharging liens on the vessel". On consideration of these facts the Circuit Court of Appeals for the Fifth Circuit held that no maritime lien arose in favor of the supplier and affirmed the lower court in a dismissal of the libel asserting such a lien.

This conflict of decision has been conceded by the Circuit Court of Appeals for the Ninth Circuit. In the present cause it cited its own former decisions in *The Portland*, 273 Fed. 401, and in *The Golden Gate*, 52 Fed. (2d) 397, as controlling (R. 226); and stated that the question was re-examined upon its own later decision in *The Luddeo*, 66 Fed. (2d) 997, wherein its opinion (p. 998) recites the conflict with *The Cratheus*, 263 Fed. 693 (C. C. A. 5) and with the *Pensacola S. Co.* v. *U. S. Shipping Board*, 277 Fed. 889 (C. C. A. 5).

2. Conflict with Applicable Decision of this Court

The decision of the Circuit Court of Appeals for the Ninth Circuit in this cause is probably in conflict

with the applicable decision of this court in *Piedmont, etc. Coal Co.* v. *Seaboard Fisheries*, 254 U. S. 1.

In that case (254 U. S. 9) this court categorically classified the elements of a maritime lien by saying:

> "*Because the ship's need was the source of the maritime lien, it could arise only (1) if the repairs or supplies were necessary; (2) if the pledge of her credit was necessary to the obtaining of them; (3) if they were actually obtained; and (4) if they were furnished upon her credit.*" (Numerals supplied.)

In the present cause two of these essentials to a maritime lien were absent. First, the respondent under its contract sold the fuel oil to W. L. Comyn & Sons upon its individual credit solely. Hence, such fuel oil was not furnished upon the credit of the vessels. Second, by such contract the respondent was legally bound to sell fuel oil to W. L. Comyn & Sons for "any and all vessels owned, chartered and/or operated" by it—wholly irrespective of its authority or lack of authority by subsequent undetermined charter party or operating agreement to pledge the credit of such vessels. Hence, it was not necessary that the credit of the vessels be pledged for such vessels to obtain fuel oil from respondent.

3. Question Justifies Settlement by this Court

Important provisions of respondent's blanket sales contract with W. L. Comyn & Sons are in common usage by distributors of oils to vessels for fuel purposes. The most vital and the most usual provision of said contract, which obligated respondent to sell fuel oil to W. L. Comyn & Sons for "any and all

vessels owned, chartered and/or operated" by it, has been considered in maritime lien cases in identical language or meaning by inferior Federal Courts with varying results.

The Cratheus, 263 Fed. 693 (C. C. A. 5);
The Portland, 273 Fed. 401 (C. C. A. 9);
The Golden Gate, 52 Fed. (2d) 397 (C. C. A. 9);
The Dictator, 18 Fed. (2d) 131 (D. C., La.).

As to the form of the charter parties involved in this cause, it is the "Time Charter Government Form, approved by the New York Produce Exchange" (R. 114, 126), which is of such frequent adoption as to be quoted in many texts and publications for resort of both lawyers and laymen interested in shipping.

3 Benedict Admiralty (5th ed.) p. 88;
Poor on Charter Parties (2nd ed.) p. 223;
Cases on Admiralty, Lord & Sprague (2nd ed.) p. 967;
8 Nichols Cyclopedia of Legal Forms, p. 439.

The essential provision of the charter party form which obligated W. L. Conyn & Co. to "provide and pay for all" fuel oil, has been so long a factor in maritime relationships as to receive, with differing results, interpretation by a number of admiralty opinions.

The Cratheus, 263 Fed. 693 (C. C. A. 5);
The Augusta W. Snow, 46 Fed. (2d) 992 (C. C. A. 1);
The J. W. Hennessey, 57 Fed. (2d) 77 (C. C. A. 2);
The Golden Gate, 52 Fed. (2d) 397 (C. C. A. 9);

The Everosa, 93 Fed. (2d) 732 (C. C. A. 1);
The Millinocket, 266 Fed. 392 (D. C., N. Y.);
The Thordis, 290 Fed. 255 (D. C., N. Y.);
The A. S. Sherman, 51 Fed. (2d) 782 (D. C., N. Y.);
The Pajala, 7 Fed. Supp. 618 (D. C., N. Y.);
The Henry W. Breyer, 17 Fed. (2d) 423 (D. C., Md.);
The U. S. 219, 21 Fed. Supp. 463 (D. C., Penn.);
The City of Helena, 25 Fed. Supp. 864 (D. C., Mo.).

However, no maritime lien decision of this court has placed final construction on the controlling clause in either the contract or the charter party. Hence the question decided by the appellate court as to the existence of a maritime lien in this cause, both as affected by respondent's blanket oil contract and as affected by W. L. Comyn & Sons' charter party, justifies consideration and settlement by this court as a matter of broad concern in water commerce.

CONCLUSION

Wherefore, it is respectfully submitted that this petition should be granted.

LANE, SUMMERS,
Proctor for Petitioners.

W. H. HAYDEN,
F. T. MERRITT,
G. H. BUCEY,
Of Counsel.
Central Building,
Seattle, Washington.

United States of America,
District of Columbia,
City of Washington. } ss.

Lane Summers, being first duly sworn, on oath deposes and says:

That he is an attorney at law, admitted to practice before the Supreme Court of the United States; that he is one of the proctors for said petitioners; that he prepared the foregoing petition in good faith and not for delay; that said petition in his opinion is meritorious and well founded in law.

LANE SUMMERS.

Subscribed and sworn to before me this 19th day of January, 1940.

EDNA W. SCHALLER

Notary Public in and for the District of Columbia.

(Seal)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. .....

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Motorship "STJERNEBORG", and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "BRAND",

Petitioners,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Respondent.

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

LANE SUMMERS,
Proctor for Petitioners,
Central Building,
Seattle, Washington.

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Petitioners,

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SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation,

Respondent.

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Opinion for the District Court written by Judge Cushman (R. 154-163), was filed December 7, 1938, and was reported at 25 Fed. Supp. 632.

The opinion of the Circuit Court of Appeals (Circuit Judges Wilbur, Haney and Healy) written by Judge Haney, was filed October 26, 1939 (R. 222-227) and is reported in 106 Fed. (2d) 896.

JURISDICTION

Jurisdiction of this court is invoked under Judicial Code sec. 240(a), as amended by Acts of February

13, 1925, ch. 229, sec. 1, 43 Stat. 938; January 31, 1928, ch. 14, sec. 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926 (28 U. S. C. A., sec. 347(a)).

The decree of the Circuit Court of Appeals to be reviewed was entered October 26, 1939 (R. 228). No petition for rehearing was filed.

The three months period allowed by act of February 13, 1925, ch. 229, sec. 8 (28 U. S. C. A., sec. 350) for filing ends January 25, 1940.

The foregoing petition and this brief will have been filed before January 25, 1940.

FACTS

The facts in this cause material to the question presented for review have been recited in the "Summary of Facts" contained in the foregoing petition.

QUESTION PRESENTED

There are two phases in the question presented to this court for decision.

First, whether a charterer who, by the charter party was required "to provide and pay for all" fuel oil, was without authority to subject the vessel to a maritime lien under sec. 30 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. 971-975).

Second, whether a supplier relied upon the credit of the vessel and obtained a maritime lien, when fuel oil was furnished solely upon the order of the charterer, as buyer, pursuant to prior general sales contract obligating the supplier to sell for "any and all vessels owned, chartered and or operated" later by the buyer, obligating the supplier to extend credit to the buyer, and reserving in the supplier no right to refuse delivery to any vessel as to which the

subsequent charter party of the buyer might not permit the creation of a lien.

SPECIFICATIONS OF ERRORS ASSIGNED

(1) The District Court erred in holding that the fuel oil was sold on the credit of the respondent vessels. Assignments of Error 1 (R. 197, 201).

(2) The District Court erred in holding that under the terms of the charter party, the time charterer had authority to pledge the credit of the chartered vessel and create a maritime lien against the same. Assignments of Error 15 and 13 (R. 200, 203).

(3) The District Court erred because it failed to hold that under the terms of the general fuel oil sales contract between the supplier and the charterer of the respondent vessel, no maritime lien was contemplated or could arise. Assignments of Error 14 and 12 (R. 200, 203).

SUMMARY OF ARGUMENT

(1) A time charter party provision requiring the charterer to "provide and pay for all" fuel oil deprives the charterer of authority to impose a maritime lien against the vessel for fuel oil supplied.

(2) A supplier who contracts to sell to the buyer all fuel oil required over a long term for "any and all vessels owned, chartered and/or operated" subsequently by the buyer is not entitled to a maritime lien because the oil furnished under such contract was in fact sold exclusively on the buyer's credit, and the pledge of the ship's credit was not necessary to secure delivery.

(3) The time charter party provision and the general sales contract being in wide commercial usage and involving substantial rights, not heretofore interpreted by this court, but differently interpreted by the lower courts, justify and require this court's construction of their meaning.

ARGUMENT

1. Conflict of Decisions Between Circuit Courts of Appeals

The decision of the Ninth Circuit Court of Appeals in the instant case is in conflict with the decisions of the Circuit Court of Appeals for the Fifth Circuit in *The Cratheus*, 263 Fed. 693 (Cert. denied, 253 U. S. 492); and in *Pensacola S. Co. v. U. S. Shipping Board*, 277 Fed. 889.

Recognition of this conflict is made in the opinion in the present case (R. 226) by reference to the rule in *The Portland*, 273 Fed. 401 (C. C. A. 9) and in *The Golden Gate*, 52 Fed. (2d) 397 (C. C. A. 9) and to the court's re-examination of the question in *The Ludden*, 66 Fed. (2d) 997 (C. C. A. 9), wherein it was observed that:

> "A simple provision that the charterer must pay for fuel or other necessaries has accordingly been held sufficient to deprive him of authority to bind the vessel. *The Cratheus*, 263 F. 693 (C. C. A. 5th, 1920); *Pensacola Shipping Co. v. United States Shipping Board Emergency Fleet Corporation*, 277 F. 889 (C. C. A. 5th, 1922); *The Mona*, 282 F. 468 (C. C. A. 4th, 1922); *The Dictator*, 18 F. (2d) 131 (D. C. E. D. La., 1927); *Henry W. Breyer*, 17 F. (2d) 423 (D. C.

Md., 1927); *cf. The Ben Lawers*, 42 F. (2d) 897 (D. C. W. D. Wash., 1930). In this circuit, however, the South Coast decision has been accepted as having a wider connotation. In *The Golden Gate*, 52 F. (2d) 397 (1931), cert. denied *Knutsen v. Associated Oil Co.*, 284 U. S. 682, 52 S. Ct. 199, 76 L. Ed. 576, (1932), we held that a charter provision to the effect that the charterer shall provide and pay for fuel does not prevent the attachment of a lien for fuel ordered by the charterer or the ship's officers, in the absence of an express provision prohibiting the charterer from creating liens" (p. 998).

In *The Cratheus, supra* (as in the pending case), the supplier was obligated to the charterers to furnish "all the bunker coal required by them * * * for steamers of which they are owners, charterers, or time charterers or in which they are otherwise interested"; and the charter party required the charterer to "provide and pay for all coal". Upon these facts the court held that no maritime lien arose in favor of the supplier. The conflict is complete and clear.

Further judicial comment on the conflict is found in *The Pajala*, 7 Fed. Supp. 618 (D. C. E. D., N. Y.), again involving a supplier under a general fuel oil sales contract to supply "vessels owned, controlled or operated under charter" asserting a lien against a vessel under time charter, requiring the charterer to "provide and pay for all the bunker oil". A lien was denied the supplier and the court observed:

> "The choice of following the law as announced in this court, rather than the two decisions in the Ninth Circuit, is deliberate and in the belief that correction, if it be appropriate, lies elsewhere."
>
> *The Pajala*, 7 Fed. Supp. 618, 621.

2. Conflict with applicable decision of this Court

The decision in the instant case is in conflict with the analysis and determination of the basic elements of a maritime lien as contained in the decision of this court in *Piedmont, etc. Coal Co.* v. *Seaboard Fisheries*, 254 U. S. 1. There, this court had under consideration different facts. However, the careful deliberate enumeration of the fundamentals of a maritime lien together with the conclusion that such requirements were not modified by any statutory enactments of Congress, indicates that the opinion was intended as a guide to other courts for testing the existence or non-existence of a maritime lien.

The elements of a maritime lien so enumerated are:

> "*Because the ship's need was the source of the maritime lien, it could arise only (1) if the repairs or supplies were necessary; (2) if the pledge of her credit was necessary to the obtaining of them; (3) if they were actually obtained; and (4) if they were furnished upon her credit.*" (Numerals supplied.)
>
> *Piedmont, etc. Coal Co.* v. *Seaboard Fisheries*, 254 U. S. 1, 9.

Petitioners contend that respondent did not in fact furnish fuel oil upon the credit of the vessels and the pledge of the ship's credit was not in fact necessary to secure delivery.

This contention is based upon the respondent's contract with W. L. Conyus & Sons, as buyer, for the future sale of fuel oil to "any and all vessels owned, chartered and or operated" by the buyer.

This contract was made more than half a year in advance of the W. L. Comyn & Sons' charters of the vessels "Brand" and "Stjerneborg". Respondent could not possibly know what charter party restrictions or limitations might be imposed by the owners of the vessels upon the charterer, its buyer. Nevertheless, the respondent by its contract with W. L. Comyn & Sons made no reservation of any right to refuse a sale to its buyer or to refuse a delivery to any vessel because the future charter party or operating agreement negotiated by W. L. Comyn & Sons with some vessel owner conferred no authority to pledge the credit of the vessel or expressly prohibited the creation of a lien. Wholly without regard to the possibly complete lack of authority in its buyer to bind the vessel, respondent's contract granted personal credit to the buyer, as follows:

"Article VI. Payment

The Buyer shall pay the Seller on or before the 10th of each calendar month for all deliveries made hereunder during the preceding calendar month. If at any time the Buyer shall fail to make any payment due hereunder or if the credit of the Buyer shall for any cause be deemed unsatisfactory by the Seller the Seller may, before making further deliveries, require the Buyer to pay for said oil with each order or may suspend deliveries hereunder until such payment has been made or may terminate this contract. No such suspension or termination shall affect the obligations of the Buyer hereunder and such failure to pay shall be deemed a breach of this entire contract" (R. 45, 49; Ex. A).

By this provision respondent not only bound itself to extend credit to its buyer, but it also limited its rights arising from non-payment to remedies against the buyer without reference to any rights or remedies against any vessel. Respondent's contract neither expressly nor impliedly mentioned any obligation of the vessel or any lien against the vessel.

This sales contract is eloquently unlike the sales contract involved in *Bankers Trust Co.* v. *Hudson River Day Line*, 93 Fed. (2d) 457 (C. C. A. 2), which obviously shows the seller's intention to rely upon the credit of both the buyer and the vessel by a provision that the seller "will rely on any vessel receiving fuel oil and or this contract for the purchase price thereof". The court denied a lien upon other grounds.

Petitioners contend that in respondent's assertion of lien two of the essentials of a maritime lien are absent: (a) The fuel oil was not in fact furnished on the credit of the vessels; (b) a pledge of the credit of the vessels was not necessary to a delivery of fuel oil by respondent under its contract with its buyer.

Hence, petitioners submit that the allowance of such a lien by the Appellate Court in this case conflicts with the controlling rule of this Court in the *Piedmont* case, *supra*.

3. Question justifies settlement by this Court

The time charter party provision requiring the charterer "to provide and pay for" fuel and other supplies without other provisions as to liens has not been construed by this court.

The language construed in *The South Coast*, 251 U. S. 519, was:

> "The bare vessel at the time was under charter to one Levick, the contract stipulating that Levick was to pay all charges and to save the owner harmless from all liens and expenses. * * * There was also a provision that the owner might retake the vessel in case of failure of Levick to discharge within thirty days any debts which were liens upon it. * * *"

A lien was allowed because:

> "The charter party recognizes that liens may be imposed by the charterers and allowed to stand for less than a month. * * *."

In *United States* v. *Carver*, 260 U. S. 482, the charter party provided the charterers were "to pay all costs and expenses incident to the use and operation of the vessels, and 'will not suffer nor permit to be continued any lien * * *'." A lien was denied the supplier because under the charter party the charterer had no authority to pledge the vessel's credit. This court said:

> "But the primary undertaking is that a lien shall not be imposed."
>
> 260 U. S. 489.

These two decisions have received different constructions by various federal courts when attempt has been made to inappropriately apply their holdings to a charter party stipulation such as that presented by this case in the New York Produce Exchange Form. The result is confusion with respect to a widely used charter party.

The Cratheus, 263 Fed. 693 (C. C. A. 5);
The Augusta W. Snow, 46 Fed. (2d) 992 (C. C. A. 1);
The J. W. Hennessey, 57 Fed. (2d) 77 (C. C. A. 2);
The Golden Gate, 52 Fed. (2d) 397 (C. C. A. 9);
The Everosa, 93 Fed. (2d) 732 (C. C. A. 1);
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The Thordis, 290 Fed. 255 (D. C., N. Y.);
The A. S. Sherman, 51 Fed. (2d) 782 (D. C., N. Y.);
The Pojala, 7 Fed. Supp. 618 (D. C., N. Y.);
The Henry W. Breyer, 17 Fed. (2d) 423 (D. C., Md.);
The U. S. 219, 21 Fed. Supp. 463 (D. C., Penn.);
The City of Helena, 25 Fed. Supp. 864 (D. C., Mo.).

Reference only is made to the various texts containing the New York Produce Exchange charter party to indicate the prominence of this standardized form.

3 Benedict Admiralty (5th ed.) p. 88;
Poor on Charter Parties (2nd ed.) p. 223;
Cases on Admiralty, Lord & Sprague (2nd ed.) p. 967;
8 Nichols Cyclopedia of Legal Forms, p. 439.

Reference also is made to the following cases dealing with similar general sales contract clauses obligating the seller to supply any and all vessels owned, chartered or operated by the buyer.

The Cratheus, 263 Fed. 693 (C. C. A. 5);
The Portland, 273 Fed. 401 (C. C. A. 9);
The Golden Gate, 52 Fed. (2d) 397 (C. C. A. 9);
The Dictator, 18 Fed. (2d) 131 (D. C., La.);
The Pajala, 7 Fed. Supp. 618 (D. C., N. Y.).

The absence of any adjudication by this court determinative of the effect of a charter party and a contract in extensive use, combined with the existing conflict of decision in maritime circuits, and with this court's prior decision, makes this court's review of the Circuit Court of Appeals ruling in the instant case of public importance.

CONCLUSION

Wherefore, it is respectfully submitted that the foregoing petition should be granted for the reasons assigned.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 662.

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Motorship "Stjerneborg," and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "Brand," *Petitioners*,

v.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation, *Respondent*.

BRIEF OF PETITIONERS.

Upon Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

LANE SUMMERS,
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SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation, *Respondent*.

BRIEF OF PETITIONERS.

Upon Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

INTRODUCTION.

This brief on the merits of the questions to be reviewed is supplemental to petitioners' brief supporting their petition for writ of certiorari in this matter.

OPINIONS BELOW.

The opinion in the District Court written by Judge E. E. Cushman is reported in 25 Fed. Supp. 594. It was filed December 7, 1938 (R. 154-163).

The opinion in the Circuit Court of Appeals for the Ninth Circuit (Wilbur, Haney and Healy) written by Judge B. E. Haney, is reported in 106 Fed. (2d) 896. It was filed October 26, 1939 (R. 222-227).

JURISDICTION.

Jurisdiction of this Court is invoked under Judicial Code Sec. 240 (a), as amended (Acts of February 13, 1925, ch. 229, sec. 1, 43 Stat. 938; January 31, 1928, ch. 14, sec. 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926); 28 U. S. C. A. sec. 347 (a).

The decree of the Circuit Court of Appeals for the Ninth Circuit to be reviewed was entered October 26, 1939 (R. 228, 229). The petition for writ of certiorari was filed on January 22, 1940. Order of this Court granting such writ was entered February 26, 1940.

PARTIES.

The petitioners before this Court are foreign corporations—the Norwegian owner of the motorship "Brand," and the Danish owner of the motorship "Stjerneborg" (R. 10-13). In the Circuit Court of Appeals they were appellants; in the District Court they were claimants of the respondent vessels.

The respondent before this Court is the Signal Oil & Gas Company of California, a California corporation (R. 5, 7). In the Circuit Court of Appeals it was appellee; in the District Court it was libelant.

STATEMENT OF THE CASE.

The case involves the determination of the existence or absence of a maritime lien.

The Facts.

In September, 1932, the respondent Signal Oil & Gas Company of California, as seller, entered into a formal

long-term contract (R. 45-53; Ex. A) with "Anglo Canadian Shipping Coy. Ltd. of Canada," as buyer, covering the future sale and purchase of fuel oil for "any vessels which the buyer may own, charter, operate or be agents for" during the designated term (R. 31, 46).

In May, 1933, said contract was modified by letters to permit W. L. Comyn & Sons, a corporation, as an independent, additional buyer, to purchase fuel oil for "any and all vessels owned, chartered and/or operated by" it (R. 32, 58; Ex. D). Under said contract as modified the respondent Signal Oil & Gas Company became obligated to sell; and W. L. Comyn & Sons became entitled to buy upon its own order and upon its own credit (R. 32, 33, 58, 59, 60, 61, 62; Ex. D, E, F, G).

Such contract, as originally executed and as so modified, used no language which stated or implied that the respondent Signal Oil & Gas Company, in thus obligating itself to future sales and deliveries of fuel oil was relying on the credit of any vessel or upon a maritime lien (R. 45-53; 58-63). Such contract allowed to W. L. Comyn & Sons liberal credit, extended in time to forty days and unlimited in amount (R. 49, 58). As respondent's exclusive protection against the buyer's development of an unsatisfactory credit status or its non-payment for past credit purchases, such contract provided that respondent might require the buyer to pay cash upon future deliveries, or might suspend deliveries pending full payment, or might terminate the contract (R. 49).

Long after the execution and the modification of said contract, W. L. Comyn & Sons became the charterer of the motorship "Stjerneborg" in January, 1934, and of the motorship "Brand" in March, 1934 (R. 126, 114; Ex. P-2, Ex. O-2). Both charter parties required that the charterer "shall provide and pay for all" fuel oil (R. 40, 116, 124, 136).

Later, under said contract as so modified, the respondent filled two orders issued by W. L. Comyn & Sons, as buyer, for delivery of fuel oil to the "Brand" at Point Wells,

Washington, on April 26, 1934, and at San Pedro, California, on May 11, 1934 (R. 37, 38). Also under said contract as so modified, the respondent filled another order issued by W. L. Comyn & Sons, as buyer, for delivery of fuel oil to the "Stjerneborg" at Astoria, Oregon, on May 15, 1934 (R. 38, 39). Such orders were made solely by W. L. Comyn & Sons which was related to said vessels merely as charterer under said charter parties (R. 39, 40). None of such orders for fuel oil was made by either the master or the chief engineer of either vessel (R. 40). None of such orders was made by the foreign owner of either vessel—as a factual matter (R. 37, 38, 39, 40).

Both before and after said contract was modified to constitute W. L. Comyn & Sons as a buyer thereunder, the respondent either knew, or easily could have ascertained, that W. L. Comyn & Sons was in business, not as an owner of vessels, but only as an operator, sometimes for owner's account and sometimes for charterer's account (R. 41).

In addition, as connected with the fuel oil supplied to the "Brand," on April 26, 1934, at the time of the first delivery, and again on May 11, 1934, at the time of the second delivery, the chief engineer notified respondent that the oil was "*for time charterer's account*" by endorsement on the delivery receipt (R. 37, 38). What previous similar notice may have been given respondent by W. L. Comyn & Sons is not disclosed because its original order as to the "Brand" has never been located (R. 37). As connected with the fuel oil supplied to the "Stjerneborg" on May 15, 1934, the original order from W. L. Comyn & Sons by letter dated May 1, 1934, notified respondent that such vessel was "*at present on our time charter*" (R. 38, 39).

Hence, by general knowledge and by specific notice, respondent was acquainted with the relationship of W. L. Comyn & Sons to the vessels as charterer and was chargeable with the charter party limitations upon its authority to pledge the credit of the vessels (R. 37, 38, 39, 40, 41).

Resulting from a protracted strike among longshoremen on the Pacific Coast, W. L. Comyn & Sons became finan-

cially embarrassed and ultimately failed to make payment for the fuel oil which it bought to supply the "Brand" and the "Stjerneborg" (R. 41).

The Proceedings.

A libel in rem was filed against the "Stjerneborg" in May, 1935, and against the "Brand" in June, 1935, by which respondent asserted a maritime lien for the contract purchase price (R. 4-10). After attachment upon process the vessels were released by bonds filed in behalf of the petitioners as owners (R. 10-19).

By their answers, the petitioners appropriately denied the allegations of said libels as to a maritime lien and affirmatively alleged in defense that no such lien existed:

(1) because under all the terms of said contract the fuel oil was sold and delivered upon the sole credit of W. L. Comyn & Sons, and not upon the credit of the vessels;

(2) because under the provisions of said charter parties W. L. Comyn & Sons was obligated to "provide and pay for all" fuel oil, and was without authority to pledge the credit of the vessels (R. 21, 22, 27, 28).

Because of the similarity of facts involved and the identity of the legal questions presented, the two cases were consolidated for trial (R. 31).

The facts were submitted to the District Court by stipulation in lieu of evidence (R. 31-153). After its memorandum decision (R. 154-163), that court adopted such stipulation as its findings in each case (R. 164, 166) from which it drew separate conclusions of law (R. 164, 166) and on which it based separate decrees (R. 170-174).

By such conclusions and decrees the District Court declared and foreclosed a maritime lien against each vessel (R. 163-166; 170-174).

To all such rulings, exceptions were duly filed in behalf of petitioners and were duly allowed by that court (R. 167-170; 174-176).

For economy and convenience the two causes were consolidated for appeal (R. 207).

Petitioners appealed to the Circuit Court of Appeals for the Ninth Circuit in the manner required by applicable statutes and rules (R. 189-218). Incidental to such appeal they filed "Statement of Points" (R. 215-217) which included the following—

> "(1) No maritime lien was created:
>
> "(a) The terms of the charter parties covering the respondent vessels obligated the charterer to pay for fuel oil, and did not authorize or empower the charterer, upon whose order appellee supplied fuel oil, to pledge the credit of the respondent vessels;
>
> "(b) The fuel oil was sold to the charterer and was delivered to the respondent vessels by appellee under its general sales contract with the charterer, not upon the credit of the vessels themselves, but upon the personal credit of the charterer.
>
> "(2) Maritime lien, if any, was waived:
>
> "(a) By the terms of the appellee's general contract with the charterer for the future sale of fuel oil; * * *."

SPECIFICATION OF ASSIGNED ERRORS.

Of the Assignments of Error in the two cases on the appeal to the Circuit Court of Appeals for the Ninth Circuit (R. 197-204), petitioners rely in this court upon those specified, as follows:

1. The District Court erred by holding that the stipulated facts showed that the fuel oil was furnished upon the credit of the vessels and resulted in the creation of a maritime lien. Assignment of Error No. 1 (R. 197); Assignment of Error No. 1 (R. 201).

2. The District Court erred by failing to hold that the fuel oil was furnished the vessels solely upon the personal credit of the charterer and that no maritime lien was cre-

ated. Assignment of Error No. 7 (R. 199); Assignment of Error No. 6 (R. 202).

3. The District Court erred by failing to hold that under the terms of the charter parties covering the vessels at the time the fuel oil was furnished by respondent, the charterer possessed no power or authority to pledge the credit of the vessels or to create a maritime lien against the same. Assignment of Error No. 15 (R. 200); Assignment of Error No. 13 (R. 203).

4. The District Court erred by failing to hold that, under the terms of the general contract for the sale and purchase of fuel oil between respondent and the charterer of the vessels, no maritime lien was contemplated or could arise. Assignment of Error No. 14 (R. 200); Assignment of Error No. 12 (R. 203).

5. The District Court erred by directing and entering decrees awarding and foreclosing a maritime lien against the vessels. Assignments of Error Nos. 5, 12, 16 (R. 198, 199, 200); Assignments of Error Nos. 4, 10, 14 (R. 202, 203).

QUESTION PRESENTED.

The question presented for determination by this Court is the existence or absence of a maritime lien under sec. 30 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. secs. 971-975; quoted in Appendix).

This ultimate question in this particular case tenders for decision two separate questions:

1. Whether the fuel oil was furnished in reliance by respondent upon the credit of the vessels as a prerequisite to delivery thereof—this question arises from the antecedent contract for the future sales and purchases between respondent and the buyer, who later became the charterer of the vessels. This is a question of credit.

2. Whether the charterer in ordering fuel oil was empowered by the owners of the vessels to pledge their credit

and create a lien thereon—this question arises from the subsequent charter parties which required that the charterer itself "shall provide and pay for all" fuel oil (R. 40). This is a question of authority.

Although apparently confused by both lower courts, these two questions are independent and distinct.

If either of these questions is resolved in favor of petitioners, the vessel owners, the maritime lien fails.

ARGUMENT.

I—OIL CONTRACT NEGATIVED LIEN.

To summarize argument in relation to the first question, petitioners contend that the general contract for future sale and purchase of fuel oil negatived contemplation of and reliance upon a maritime lien by respondent. This contract expressly designated respondent's rights against its buyer in case the latter defaulted in payment. But it made no reservation of or reference to any lien; it created no obligation by the vessel owners; and provided no remedy against the vessels. It lawfully bound respondent to furnish, upon the sole order and upon the individual credit of the buyer, W. L. Comyn & Sons, all fuel oil required for "any and all vessels owned, chartered, and or operated" later by that concern, during the full life of the contract (R. 32, 33, 45-53, 58; Ex. A, Ex. D). It preserved in respondent no legal right of refusal to supply fuel oil upon the order and credit of its buyer, in the event that a subsequent charter party or operating agreement failed to empower W. L. Comyn & Sons to create a maritime lien, or in the event that the credit of some vessel for any of many reasons was worthless. Respondent's general contract makes directly applicable that provision of the maritime law which says that, "nothing in this section shall be construed to prevent the furnisher of * * * supplies * * * from waiving his *right* to a lien * * * at any time, by agreement or otherwise * * *." (Subsec. S of Sec. 30, Merchant Marine Act of June 5, 1920; 46 U. S. C. A. 974; Appendix.) Petitioners

contend that by this contract effective as to W. L. Comyn & Sons in May, 1933 (R. 32, 33), respondent then waived its *right* to a maritime lien; and that, therefore, no lien arose from fuel oil deliveries in April and May, 1934, made to vessels subsequently chartered by W. L. Comyn & Sons (R. 114, 126) and made exclusively upon the order and the credit of the charterer in the performance of said general contract (R. 33, 37-40). In such contention petitioners are fortified, because respondent required that, "this contract and the interpretation hereof shall be governed by the laws of the State of California" (R, 52). By this provision respondent incorporated, as controlling, a body of state law incapable of authorizing the very lien asserted by its libels (R. 5, 8); and excluded the Federal maritime law alone capable of granting such a lien. (Subsec. T of Sec. 30, Merchant Marine Act of June 5, 1920; 46 U. S. C. A. 975; Appendix.)

In initiating amplification of this argument, petitioners invite review of some previous expressions by this Court as to the maritime lien.

The President Arthur, 279 U. S. 564, was decided May 20, 1929. In that case a maritime lien was asserted for coal furnished under formal contracts signed by the vessel owner itself, wherein the supplier in advance of delivery exacted security and payment in the form of trade acceptances signed by responsible third parties as endorsers. To the extent of these facts the decision is not wholly in point. However, in its opinion, this Court made observations bearing upon present considerations.

The opinion commented that:

> "Neither contract referred to any lien on the vessel; and each recited that 'the entire contract between the parties is stated above and there is no outside condition, warranty, agreement or understanding'." (279 U. S. 566.)

Then, after indicating that the case involved a question of whether the maritime lien had been waived by the sup-

plier in its original contracts with the vessel owner prior to delivery of the coal, the opinion continued:

> "As to the first of these questions it is necessary to consider the provisions of the Maritime Lien Act of 1910, relating to liens for necessaries, which were re-enacted in the Ship Mortgage Act of 1920. Subsec. P of the latter Act provides that: 'Any person furnishing repairs, supplies . . . or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.' Subsec. S provides that: 'Nothing in this section shall be construed to prevent the furnisher of repairs, supplies . . . or other necessaries . . . from waiving his right to a lien . . . at any time, by agreement or otherwise . . .'
>
> "Prior to the Act of 1910 it had been settled that by the maritime law as administered in this country a lien was given for necessaries furnished a vessel in a port of a foreign country or state upon the credit of such vessel; but that no such lien was given for necessaries furnished in the home port or state. *The Roanoke*, 189 U. S. 185, 193.
>
> "The purpose of the Act of 1910, as shown by the Reports of the Committees of Congress, was to do away with this 'artificial distinction' and 'the doctrine that, when the owner of a vessel contracts in person for necessaries or is present in the port when they are ordered, it is presumed that the materialman did not intend to rely upon the credit of the vessel, and that hence no lien arises'; and 'to substitute a single federal statute for the state statutes in so far as they confer liens for repairs, supplies and necessaries.' *Piedmont Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, 11.
>
> "To this end the Act gave a maritime lien on any vessel, whether foreign or domestic, for necessaries furnished on the order of the owner or his authorized agent, and relieved the libellant from the necessity of alleging or proving that credit was given to the vessel. The Committee reports show, however, that it was not

intended to make any other change in the general principles of the existing law of maritime liens, *Piedmont Coal Co.* v. *Seaboard Fisheries Co.*, *supra*, p. 11; and the specific provision that the Act should not be construed as preventing the furnisher of the necessaries from waiving his right to a lien, 'by agreement or otherwise,' indicates clearly, we think, that it was not intended to change the principles of the maritime law in respect thereto. That an express renunciation of the lien is not essential, is plain.

"We need not enter here into the general field of the waiver of maritime liens. Such liens differ in their character and are not equally favored—the lien for necessaries, which is a secret one, being *stricti juris*, *Piedmont Coal Co.* v. *Seaboard Fisheries Co.*, *supra*, 12. It suffices to say that we think the principles applicable to the question whether the lien was waived by the contracts entered into here, are aptly indicated in the following cases, which, in the main, were analogous in their facts to the present case, and were decided by members of this Court, sitting at circuit.

"In *Murray* v. *Lazarus*, 1 Paine 572, 17 Fed. Cas. 1049, 1051 (1826), the libellants made a special agreement with the master for the payment of their advances for repairs and supplies furnished the vessel in a foreign port, and took from him a bill of exchange drawn upon the agents of the owner. Thompson, Circuit Justice, in holding that the libellants had no lien for these advances on the freight monies received by the owners, said: 'When an express contract has been entered into for the payment of such expenses, that must be resorted to, and will be considered a waiver of such implied lien if any existed. And a party who has waived his right in this respect cannot be permitted, at a subsequent time, and under a change of circumstances to reinstate himself in his former condition to the injury of others . . . If this is to be considered a regular and ordinary bill of exchange, it was a substitution for any lien that might have existed, and must be considered a relinquishment thereof.'

"In *Phelps* v. *The Camilla*, Taney, 400, 19 Fed. Cas. 441, 445 (1838), the libellants furnished the agents of the vessel in a foreign port copper which was used in repairing the vessel. The sale was made on a written

order of the agents that made no mention of the vessel or her owners. The copper was charged to the agents, and they gave the libellants their negotiable note, which was not paid. The libellants claimed that the charge to the agents had been made by mistake, and some months later changed the account on their books and charged the copper to the ship and her owners. Taney, Circuit Justice, finding upon the evidence that the copper was sold to the agents upon their personal credit and was not furnished upon the credit of the brig and her owners, held that the libellants had no lien, but added: 'It must not, however, be understood, that the decision would be different, if the copper had been originally charged to The Camilla and her owners. It is true, that upon such a sale, the libellants would, in the first instance, have acquired a lien upon the brig; but that lien, in my opinion, would have been waived by taking afterwards the note of (the agents) . . . If the party does not choose to rely on the contract which the maritime law implies in such cases, but takes an express written contract, he must rely on the contract he makes for himself, and cannot, upon a change of circumstances, resort to the securities upon which, in the absence of any special agreement, the law presumes that he relied; and if he takes a note or bill of exchange, or any other personal engagement, for the payment of the debt, he is presumed to rely on this personal security, and to waive his lien, unless he stipulates that the liability of the vessel shall still continue.'

"In *Leland* v. *Medoja*, 2 Woodb. & M. 92, 15 Fed. Cas. 298, 299 (1846), Woodbury, Circuit Justice, speaking of the lien for repairs on a vessel, said that 'if the evidence . . . shows, that the ship was not relied on originally, though foreign, but the master or owners or other security were, the lien does not attach any where, or under any form.' *The Maitland*, 2 Hagg. Adm. 253; The Nestor (1 Sumner (U. S. C. C.) 73)."

"In *The Ann C. Pratt*, 1 Curt. 340, 1 Fed. Cas. 947, 950 (1853), Curtis, Circuit Justice, in holding that there was no maritime lien for advances to the master of the vessel in a foreign port to make necessary repairs that had been secured by a void bottomry bond, said, citing *The Nestor* and other cases: 'that the lien

created by the maritime law may be, and is, waived by the creditor, by any act or contract which is inconsistent with an intention to receive or retain that lien.' The decree in this case was affirmed in *Carrington* v. *Pratt*, 18 How. 63, 68, in which this Court said that 'it is well settled that the lien implied by the general admiralty law, may be waived by the express contract of the parties, or by necessary implication; and the implication arises in all cases where the express contract is inconsistent with an intention to rely upon the lien. A familiar instance is where the money is advanced or repairs made, looking solely to the personal responsibility of the owner or master.'

"In *Taylor* v. *The Commonwealth*, 23 Fed. Cas. 756, 757 (1875), the libellant, before making repairs on the vessel at her home port, had entered into a written contract specifying that they were to be paid for partly in cash and partly in endorsed notes, that is, negotiable notes, with personal security. Miller, Circuit Justice, in holding that under these circumstances there was no lien on the vessel for the repairs, said: 'I have no doubt of the fact that a man doing that kind of work may rely on the owner of the vessel, and that if he makes no specific contract on the subject, he will have a right against the owner and the vessel—; But that is a lien which the law implies from the circumstances and if a specific contract is made which shows that the party relied upon other security and other modes of payment, then he cannot enforce the admiralty lien. If is very clear to me, here, that (the libellant) in making this contract, never intended to rely on the security of the vessel itself, because he made this contract for the very best kind of other payment. . . . I think, having made an express contract for an express security, he cannot say, "I did this work on the credit of the vessel." In other words, I think if there is any question of admiralty lien, that it must have been the intention in the mind of the party who furnishes the supplies and repairs whether in a home or foreign port, to rely on the credit of the vessel. . . . If it can be shown that he did not rely on that alone, and that he intended to rely on other security, which he supposed sufficient, or which was supposed to be better, then he had no lien, because the lien arises from implication, from the

fact expressed or implied that the man, in furnishing the supplies or contracting a debt, relied on the vessel as security, and if he relied on anything else it is another security sufficient, or supposed to be, which, in case that turned out to be insufficient, does not restore his lien.'" (279 U. S. 567-571.)

* * * * * * * * *

"Applying the principles stated in the foregoing cases, we think that the libellant, having made specific contracts for an express security, instead of resting on the lien which the law would otherwise give, must rely on the contracts it made for itself, and cannot now, in a change of circumstances, resort to the lien it would have had in the absence of the special agreements; and that by taking other and different security, upon which it relied, and which it still retains, without stipulating for the retention of the lien, it has waived the lien which it otherwise would have had." (279 U. S. 572.)

The case of *Piedmont & Georges-Creek Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, was decided by this Court October 11, 1920, based on transactions occurring before Subsections P, Q, R, S, and T of Section 30 of the Merchant Marine Act of June 5, 1920, had substantially reenacted the Maritime Lien Act of June 23, 1910 (36 Stat. 604, ch. 373).

In that case, a coal company agreed to sell coal to the owner of some nineteen vessels and certain factories, the coal to be delivered into the owner's storage bins on shore and to be used by the owner for both the vessels and the factories. This Court was required to decide whether the coal was furnished to the vessels by their owner upon its order or by the coal company. Despite their understanding that the latter was entitled to a lien on the vessels, this Court held to the contrary.

While the facts involved and the question resolved in that case were not the same as those presented here, in reaching its conclusion the opinion recited maritime lien history and principles which petitioners emphasize.

"To hold that a lien for the unpaid purchase price of supplies arises in favor of the seller merely because the purchaser, who is the owner of a vessel, subsequently appropriates the supplies to her use would involve abandonment of the principle upon which maritime liens rest and the substitution therefor of the very different principle which underlies mechanics' and materialmen's liens on houses and other structures. The former had its origin in desire to protect the ship; the latter mainly in desire to protect those who furnish work and materials. *The maritime lien developed as a necessary incident of the operation of vessels. The ship's function is to move from place to place.* She is peculiarly subject to vicissitudes which would compel abandonment of vessel or voyage, unless repairs and supplies were promptly furnished. Since she is usually absent from the home port, remote from the residence of her owners and without any large amount of money, it is essential that she should be self-reliant—that she should be able to obtain upon her own account needed repairs and supplies. The recognition by the law of such inherent power did not involve any new legal conception, since the ship had been treated in other connections as an entity capable of entering into relations with others, of acting independently and of becoming responsible for her acts. *Because the ship's need was the source of the maritime lien it could arise only if the repairs or supplies were necessary; if the pledge of her credit was necessary to the obtaining of them; if they were actually obtained; and if they were furnished upon her credit.* The mechanic's and materialman's lien, on the other hand, attaches ordinarily although the labor and material cannot be said to have been necessary; although at the time they were furnished there was no thought of obtaining security upon the building; and although the credit of the owner or of others had in fact been relied upon. The principle upon which the mechanic's lien rests is, in a sense, that of unjust enrichment. Ordinarily, it is the equity arising from assumed enhancement in value resulting from work or materials expended upon the property without payment therefor which is laid hold of to protect workman and others who, it is assumed, are especially deserving, would ordinarily fail to provide by agree-

ment for their own protection and would often be unable to do so." (254 U. S. 8, 9, 10.) * * *

"It is urged by the Coal Company that it was the intention of Congress in passing the act (Maritime Lien Act of June 23, 1910) to broaden the scope of the maritime lien and that the construction of the act adopted by the Circuit Court of Appeals renders the statute inoperative in an important class of cases which it was intended to reach. The language of the statute affords no basis for the latter assertion, and the Reports of the Committees of Congress (Senate Report, No. 831, 61st Cong., 2d sess.) show that it is unfounded. Those reports state that the purpose of the act was this: *First*, to do away with the artificial distinction by which a maritime lien was given for supplies furnished to a vessel in a port of a foreign country or state, but denied where the supplies were furnished in the home port or state. *The General Smith*, 4 Wheat. 438. *Second*, to do away with the doctrine that, when the owner of a vessel contracts in person for necessaries or is present in the port when they are ordered, it is presumed that the materialman did not intend to rely upon the credit of the vessel, and that hence, no lien arises. *The St. Jago de Cuba*, 9 Wheat. 409. *Third*, to substitute a single federal statute for the state statutes in so far as they confer liens for repairs, supplies and other necessaries. *Peyroux* v. *Howard*, 7 Pet. 324. The reports expressly declare that the bill makes 'no change in the general principles of the present law of maritime liens, but merely substitutes a single statute for the conflicting state statutes.' The act relieves the libelant of the burden of proving that credit was given to the ship when necessaries are furnished to her upon order of the owner, but it in no way lessens the materialman's burden of proving that the supplies in question were furnished to her by him upon order of the owner or of some one acting by his authority. The maritime lien is a secret one. It may operate to the prejudice of prior mortgagees or of purchasers without notice. It is therefore *stricti juris* and will not be extended by construction, analogy or inference. *The Yankee Blade*, 19 How. 82, 89; *The Cora P. White*, 243 Fed. Rep. 246, 248." (254 U. S. 11, 12.)

Returning to the facts in the present case, the long term fuel oil contract (R. 45-53; Ex. A) between "Anglo Canadian Shipping Coy. Ltd. of Canada" and Signal Oil & Gas Company of California, which was modified to include W. L. Comyn & Sons as a buyer, contained material provisions as follows:

"Article I. The Seller hereby sells to the Buyer and the Buyer buys from the Seller for delivery during a period of fifteen months * * * all Fuel Oil and Fuel Oil 27 Plus * * * which may be required by the buyer, during said period for the current fuel purposes of any vessels which the buyer may own, charter, operate or be agents for during said period, the said oil, up to the quantity specified to be the fuel exclusively used during the said period for the said purposes.

"This contract shall remain in full force and effect from and after the expiration date above named until one hundred and eighty day's written notice shall have been given by one party to the other of its intention to terminate the same, provided that such notice shall not be given by either party prior to the expiration date, above named. * * *

"Article IV. The said oil shall be delivered by the Seller on the orders of the Buyer to said vessels at the Standard Oil Company of California's plants at the waterfront, San Pedro and Richmond, California; Astoria and Willbridge (Portland), Oregon; Aberdeen and Point Wells, Washington; at Panama Canal Oil Crib, Balboa and Cristobal, Canal Zone, and or by barge to vessels along the waterfront, San Pedro and or San Francisco, California, in three thousand (3,000) barrel lots or less at option of Seller.

"Article V. The price and or prices which the Buyer shall pay to the Seller in Gold Coin of the United States of America * * *";

"Article VI. The Buyer shall pay the Seller on or before the 10th of each calendar month for all deliveries made hereunder during the preceding calendar month. If at any time the Buyer shall fail to make any payment due hereunder or if the credit of the Buyer shall for any cause be deemed unsatisfactory by the

Seller the Seller may, before making further deliveries, require the Buyer to pay for said oil with each order or may suspend deliveries hereunder until such payment has been made or may terminate this contract. No such suspension or termination shall affect the obligations of the Buyer hereunder and such failure to pay shall be deemed a breach of this entire contract.

"Article VII. The inspection of said oil for determination of quantity and quality shall be made in the presence of properly accredited representatives of the Buyer and the Seller at time of each delivery. If properly accredited representatives of the Buyer are not present at such time of inspection then the Seller's measurements and determinations of quantity and quality shall be deemed correct and no oil shall be rejected or claim as to quantity or quality allowed therefor after delivery thereof. * * *

"Article X. In the event of a breach of this contract by either the Seller or the Buyer, the measure of the estimated requirements of the said oil herein agreed to be used for the unexpired term of this contract shall be the average monthly use of oil during the months that oil was used for the purposes above stated, not exceeding twelve (12) months next preceding such termination, and the damages for such breach by either the Seller or the Buyer shall be the difference, if any, between the price herein fixed and the market price of the undelivered oil at the nearest market to the place of delivery and at the time of the breach; if there be no such difference, the Seller's damages for such breach shall be the Seller's loss of profits on such undelivered oil. All claims for special consequential or other damages, different from those hereinabove set forth are hereby waived. * * *

"Article XI. (a) This contract and the interpretation hereof shall be governed by the laws of the State of California.

"(b) This contract shall not be assignable by act of the Seller or Buyer, or by operation of law, and shall not be deemed an asset in, and at the option of either party shall terminate in the event of, any voluntary or involuntary receivership, bankruptcy or insolvency proceedings.

"(c) This instrument contains the entire contract. There are no oral promises, representations or warranties affecting it. * * *" (Ex. A; R. 45-53)

As previously recited, this contract was modified to include W. L. Comyn & Sons as a buyer in May, 1933, by exchange of letters (R. 58-63; Ex. D, E, F, G) which contained provisions as follows:

"With reference to the contract between this company and yourselves dated September 26, 1932, covering the purchase and sale of fuel oil and fuel oil 27 plus for delivery beginning October 1, 1932, and ending December 31, 1933, and thereafter until terminated by 180 days written notice from either party to the other, it is hereby understood and agreed that said 180 days notice will not be given by either of us prior to July 1, 1934.

"The contract is further modified to include the fuel oil requirements of any and all vessels owned, chartered and or operated by Dominion Commonwealth Line and or Cascade Line and or W. L. Comyn & Sons.

"The contract quantity shall be increased up to but not exceeding 500,000 barrels.

"Articles IV and V of the contract with regard to delivery points and prices shall be and the same are hereby amended to include deliveries at dock Honolulu, T. H., at a price of * * *.

"Said contract as above modified, and all of the terms and provisions thereof, is hereby ratified and confirmed." (Ex. D; R. 58, 59)

"It is our understanding that you will, of course, bill Messrs. W. L. Comyn & Sons direct for the quantity which may be used for his Cascade Line and or his own service. You will bill us for that oil which is ordered through the name of the Dominion Commonwealth Line and the Anglo Canadian Shipping Coy., Ltd." (Ex. F; R. 60, 61)

These extracts of the contract between respondent and W. L. Comyn & Sons (R. 45-53, 58-63; Ex. A, D, E, F, G) show:

(1) That W. L. Comyn & Sons was the actual buyer designated and treated as such;

(2) That the oil was to be delivered on the order of the buyer;

(3) That the oil was to be sold and deliverd to the buyer for "*any and all vessels owned, chartered and/or operated by*" the buyer;

(4) That respondent was obligated to sell and deliver for a fixed minimum period which could not be terminated before July 1, 1934;

(5) That respondent was obligated to sell and deliver any amount up to 500,000 barrels;

(6) That the buyer was to pay for the oil;

(7) That the buyer was expressly granted credit until "the 10th of each calendar month for all deliveries made hereunder during the preceding calendar month"—credit extension of as much as 40 days;

(8) That the remedy of the seller and the penalty of the buyer for the buyer's default in payment was expressly provided to be that "The seller may, before making further deliveries, require the buyer to pay for said oil with each order, or may suspend deliveries hereunder until such payment has been made, or may terminate this contract";

(9) That, to the exclusion of the vessel or vessel owner, the buyer alone was allowed the right to inspect the oil on delivery and to make claim on account of quantity or quality;

(10) That "in the event of a breach of this contract by buyer or seller" the measure of damages was specified, but no clause contemplated breach of the contract by the vessel or its owner, or provided a remedy against the vessel or its owner;

(11) That respondent's contract was obligatory upon respondent in May, 1933, before the buyer's relation to the vessels as charterer had been created, and *before respondent could possibly know whether the buyer would acquire*

any power to subject such vessels to a maritime lien for respondent's protection;

(12) That respondent's contract gave to respondent no right to require of the buyer any information concerning the buyer's relation to the vessel, nor its authority from the vessel owner with respect to the buyer's power to create a lien thereon, nor with respect to any other fact or circumstance material to respondent in determining whether, if oil were supplied to such vessel, the respondent *could* acquire the security of a maritime lien:

(13) That respondent's contract *reserved* to respondent *no right to refuse to make delivery of oil* because the vessel might depart from the jurisdiction before the expiration of the buyer's credit period or because the vessel might be owned in a foreign country with no certainty of return to any United States port, or because the value of the vessel or the amount of encumbrance thereon might afford respondent little or no security, or because the buyer's charter or operating agreement might prohibit a lien, or because some other condition or circumstance might exist preventing respondent from the probability of satisfaction out of the vessel;

(14) That respondent's contract failed to employ any phrase or word even inferentially suggestive of an intention to rely upon the credit of the vessel;

(15) That respondent's contract expressly excluded the maritime lien as protection against the buyer's nonpayment by providing that "*This instrument contains the entire contract; there are no oral promises, representations or warranties affecting it,*" and by providing also that "*This contract and the interpretation hereof shall be governed by the laws of the State of California*"—since the laws of the State of California could not extend to respondent the benefit of a maritime lien, which could arise only under the maritime laws of the United States (46 U. S. C. A. 975);

(16) that a pledge of the credit of any vessel was not a necessary element in the receipt of oil by such vessel from respondent under its contract with W. L. Comyn & Sons.

Apart from the express provisions of respondent's contract, its course of dealings thereunder with W. L. Comyn & Sons discloses that prior to the charterer's orders for delivery of oil to the "Brand" and the "Stjerneborg" for which recovery is sought in this cause, respondent had made many sales to W. L. Comyn & Sons under such contract, all upon a credit basis (R. 63, 64; Ex. H). As to credit, respondent had placed no restriction upon its buyer except to limit the period of credit to the time then allowed by the NRA Code (R. 65, 72, 73; Ex. J, Q).

Again, apart from the express provisions of the contract, the record fails to show that at any time did respondent, prior to making a sale to its buyer or a delivery to some designated vessel, conduct any investigation concerning the relation of W. L. Comyn & Sons to the vessel to be supplied with oil. The course of dealings between respondent and its buyer shows that the latter ordered oil for a named vessel usually by letter or telegram, some times giving to respondent no information whatsoever and some times merely describing the vessel as one under charter. In no instance did respondent's reply correspondence make any inquiry about the vessel or about its buyer's authority to represent or obligate the vessel. And in no instance did respondent reject any order.

The written orders for fuel oil by W. L. Comyn & Sons and the written acceptances of those orders by respondent under its contract, both before and after the deliveries to the "Brand" and the "Stjerneborg" involved in this case, all reflect a course of dealings in which respondent was relying solely upon the personal credit of its buyer (Ex. B-1, C-1, D-1, F-1, G-1, H-1, I-1, J-1, K-1, L-1, M-1, N-1, O-1, P-1, Q-1, R-1, S-1, T-1, U-1, C-2, D-2, H-2, I-2, J-2, K-2, L-2; R. 83-109). At no time did respondent show any anxiety except as to the personal credit of W. L. Comyn & Sons and its promptitude in payment. Nevertheless, re-

spondent did know that W. L. Comyn & Sons "was in business not as a vessel owner, but as a commission merchant, a freight contractor and broker, and as an operator of vessels, some times for owner's account and some times for charterer's account" (R. 41). In other words, entirely apart from its formal contract, at the time of making sales to its buyer and deliveries to vessels designated by the buyer, respondent never knew whether a lien *could* legally arise as the result of the fuel oil being supplied.

In harmony with the respondent's practices in dealing with W. L. Comyn & Sons under its contract, respondent in February, 1934, prior to the deliveries of oil to the "Brand" and the "Stjerneborg," entered the name of W. L. Comyn & Sons upon its sale register so that after that all sales were formally entered in such register under the name of W. L. Comyn & Sons (R. 33, 34).

With respect to the particular deliveries upon which respondent asserts a maritime lien, the sales were made as items in the course of dealings just reviewed. As to the "Brand", as far as known, the buyer's order for oil conveyed no information to respondent. However, at the time of making delivery to the "Brand" on April 26, 1934, the receipt for the oil evidencing the quantity delivered was endorsed by the chief engineer with the phrase "For time charterer's account". This same phrase likewise appeared on the similar receipt when a subsequent delivery of oil was made to that vessel by respondent on May 11, 1934 (Ex. A-2, F-2; R. 100,104). As to the "Stjerneborg," the order of W. L. Comyns & Sons resulting in delivery of oil by respondent on May 15, 1934, recited that such vessel was "At Present on our Time Charter" (Ex. H-2; R. 106). With such specific notice as to the limited relationship between the vessels and W. L. Comyn & Sons, still respondent made no inquiry and expressed no hesitancy because of lack of information and disclosed no unwillingness to make deliveries on its buyer's personal credit (Ex. N-1, O-1, C-2, D-2, H-2, I-2, J-2, K-2, L-2; R. 93, 94, 102, 103, 106-109).

Further, with respect to the course of dealings under respondent's contract with W. L. Comyn & Sons concerning payment for deliveries made on the buyer's order, the record contains correspondence showing that respondent billed W. L. Comyn & Sons directly, as a result of the understanding between the three parties to the contract. Anglo Canadian Shipping Coy. Ltd. in May, 1933, wrote to respondent, saying "It is our understanding that you will, of course, bill Messrs. W. L. Comyn & Sons direct for the quantity which may be used" by that concern (Ex. F; R. 60). A letter from W. L. Comyn & Sons to respondent written in July, 1933, said: "We would ask, if it is possible, that you bill us directly for oil supplied for our account to vessels of our fleet, or, in other words, bill us and not the Anglo Canadian Shipping Coy. Ltd. (Ex. I; R. 65). And, subsequently, respondent wrote to W. L. Comyn & Sons saying: "Our billing department has had some difficulty in determining which invoices should be made out to your company and which should be made out to Anglo Canadian Shipping Co.; we have now made arrangements with our order department whereby this difficulty will be eliminated in the future" (Ex. L; R. 68). The correspondence evidencing this practice and containing respondent's demand for payment, with respect to which the buyer was some times delinquent, is consistent with the provisions of the formal contract and with respondent's extension of personal credit to W. L. Comyn & Sons (R. 34).

Out of harmony with the terms of respondent's formal contract and all its practices thereunder, the record contains only one isolated fact in respondent's course of dealings consistent with respondent's contention that it relied on the credit of the vessel—the fact that respondent included the name of the vessel in its invoices. However, all invoices were sent to W. L. Comyn & Sons, and the record wholly fails to show that at any time respondent ever delivered any invoice to the vessel owner or ever requested that any invoice be relayed to the vessel owners. Respondent's

custom of addressing its invoices to the vessel and owners appears to have been a mere gesture, reflective of some usage in its accounting department, having possible value and utility as to other sales not made under blanket contracts like that granted to Anglo Canadian Shipping Coy. Ltd. and W. L. Comyn & Sons. But even if respondent's habit of naming the vessel and owners in its invoices be credited with a different origin, still it can have small weight when compared with all of its other practices and the express terms of its formal contract all harmonious with respondent's reliance solely upon the personal credit of W. L. Comyn & Sons.

Upon all of the pertinent facts and circumstances shown by the record, petitioners contend that because respondent did, by the terms of its blanket contract and by its course of dealings thereunder, rely solely upon the individual credit of W. L. Comyn & Sons, no maritime lien arose against the vessels. Petitioners conceive that the expressions of this Court in *The President Arthur*, 279 U. S. 564, and in *Piedmont etc. Coal Co.* v. *Seaboard Fisheries Co.*, 254, U. S. 1, extend support to their position.

Both the respondent here and the supplier of the coal in *The President Arthur*, *supra*, made extended written contracts fixing the rights and obligations surrounding the contemplated sales and deliveries of fuel. Both contracts omitted any reservation of or any reference to a lien. Each contract contained express provision excluding all understanding outside the document.

In *The President Arthur*, *supra*, comment was made upon these facts as tending to mitigate against the lien. This Court there said: "That an express renunciation of the lien is not essential, is plain" (279 U. S. 568).

While, as previously noted, in *The President Arthur*, *supra*, this Court held the maritime lien had been renounced by the supplier because it had exacted third party endorsements on trade acceptances as security for the price of the fuel, nevertheless, the principle applied in that case is appli-

cable to the facts of the present litigation. There the supplier was contracting directly with the vessel owner; there the supplier demanded security other than the vessel owner's credit. In this case, the supplier was contracting not with the vessel owner but with a third party who later became merely a charterer; and in contracting with W. L. Comyn & Sons and in obtaining its personal obligation, respondent acquired security other than the credit of the vessel owner. Hence, what was said by this Court in *The President Arthur*, *supra*, as to the supplier's relinquishment *in limine* of the *right* to a maritime lien is applicable to respondent's contract with W. L. Comyn & Sons.

To briefly repeat:

> "Applying the principles stated in the foregoing cases, we think that the libellant, having made specific contracts for an express security, instead of resting on the lien which the law would otherwise give, must rely on the contracts it made for itself, and cannot now, in a change of circumstances, resort to the lien it would have had in the absence of the special agreements; and that by taking other and different security, upon which it relied, and which it still retains, without stipulating for the retention of the lien it was waived the lien which it otherwise would have had." (*The President Arthur*, 279 U. S. 572)

Even more closely related to the present case are the statements of this Court in *Piedmont etc. Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, where the opinion reviewed the source of the maritime lien, contrasted common law liens, observed that the character of the maritime lien remained essentially unaltered by the 1910 Act, and categorically listed certain peculiar elements of such a lien for the future guidance of inferior admiralty courts which had been exhibiting some confusion.

To reiterate in part:

> "*Because the ship's need was the source of the maritime lien, it could arise only*

"(1) *if the repairs or supplies were necessary;*

"(2) *if the pledge of her credit was necessary to the obtaining of them;*

"(3) *if they were actually obtained;*

"(4) *and if they were furnished upon her credit.*"

(Italics and paragraph numerals supplied.) *Piedmont etc. Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, 9.

As related to these listed requisites of the maritime lien, petitioners are not claiming that the fuel was not actually received aboard the vessels, or that the fuel was not needed by the vessels. However, petitioners are strenuously contending that two of these elements were not inherent in the deliveries to the "Brand" and the "Stjerneborg". Petitioners assert:

(1) That to obtain fuel oil deliveries from respondent under its contract with W. L. Comyn & Sons it was not necessary that the credit of any vessel be pledged;

(2) That the oil deliveries made to the vessels were actually not made upon the credit of the vessels.

The provisions of respondent's contract and its course of dealings with W. L. Comyn & Sons weigh overwhelmingly in favor of the conclusion that the respondent sold and delivered upon the credit of its buyer and not upon the credit of the vessels. Considering the contract provision obligating respondent to supply fuel oil for "any and all vessels owned, chartered and or operated by" W. L. Comyn & Sons at some future time, it is impossible to logically conclude that a pledge of the credit of the vessels was necessary in order that those vessels might be furnished with fuel oil, since respondent had become legally bound to sell and deliver more than half a year prior to the execution of the charter parties covering the "Brand" and the "Stjerneborg". And it is patent that until such charter parties were negotiated and effective, respondent could not know

whether its buyer would be empowered to pledge the credit of those vessels.

The only contingency contemplated by respondent's contract because of which it might ever have been necessary for any vessel operated by W. L. Comyn & Sons to have pledged its own credit in order to obtain fuel oil was the contingency that the personal credit of W. L. Comyn & Sons had become so dissipated as to prompt respondent to exercise its contract right to require W. L. Comyn & Sons to pay cash for fuel oil on delivery with the latter being unable to comply. Then, and then only, might a vessel, under the operation of W. L. Comyn & Sons, have been compelled to resort to the vessel's own credit. But this contingency never occurred.

In maintaining its claim for a maritime lien, respondent's brief in the Circuit Court of Appeals placed principal reliance upon three cases:

The Portland, 273 Fed. 401 (C. C. A. 9—1921).
The Golden Gate, 52 Fed. (2d) 397 (C. C. A. 9—1931)
The Excrosa, 93 Fed. (2d) 732 (C. C. A. 1—1937)

Of course, these cases are not binding upon this Court. However, as viewed by petitioners they did not turn upon the point now under discussion.

It is true that in *The Portland*, 273 Fed. 401, the supplier contracted with a vessel operator for future sales and purchases of fuel oil to be delivered to designated vessels, and that later the S. S. Portland was chartered and was subsequently supplied with fuel oil. But an examination of the opinion, supplemented by a review of the briefs, fails to show that the litigants presented or the Circuit Court of Appeals decided the contention being urged here by petitioners.

In behalf of the owner of the S. S. Portland it was argued that in view of the operator's contract with the supplier, the oil was delivered upon the procurement of the operator

(then the charterer) and not "upon the order of the owner" as required by the statute. By the opinion of the Circuit Court of Appeals it was decided simply that, whether the order for the fuel oil came from the charterer or from the master of the vessel, the owner's authority to order the fuel oil existed because such authority was not negatived by the charter party. That court's opinion said:

> "* * * No lien accrues if such persons did not have authority to bind the ship, and such lack of authority was known, or ought to have been known, to the furnisher of supplies. To apply the law to the circumstances of the present case is quite simple. The supplies were furnished at San Francisco, Oleum, and Balboa, upon the order of the master of the Portland. This being the case, the libelant established a prima facie right to a lien to be upheld, unless the claimant showed facts which withdrew the case from the general provisions by proving that the furnisher knew or by the exercise of reasonable diligence could have ascertained that because of the terms of the charter party, or for any other reason, the master was without authority to bind the ship." (*The Portland*, 273 Fed. 403)

In this case there was no adjudication of the question of the supplier's credit reliance upon the charterer or the supplier's relinquishment *in limine* of its right to a lien by the terms of its sales contract. There the court was wholly concentrated upon the question of authority arising out of the charter party.

Again, in *The Golden Gate*, 52 Fed. (2d) 397, there is no consideration or decision as to the effect of a blanket sales contract upon the existence of a maritime lien. As in the earlier case before the same Circuit Court of Appeals, it was primarily weighing whether authority existed in the master of a chartered vessel to pledge its credit. On this point, the opinion cited *The Portland, supra;* also it cited *The South Coast*, 251 U. S. 519, as being conclusive. But *The South Coast, supra*, involved no contract between the the supplier and the charterer; it involved only the construction of the charter party itself.

It is true that in *The Golden Gate*, 52 Fed. (2d) 397, the opinion made bare mention of a fuel oil contract between the supplier and the charterer. But such mention was made merely to fortify the court's ruling in respect to the charter party. The opinion of the Circuit Court of Appeals said:

> "Furthermore, the contract of sale between the charterer and the libelant contained the following provision: 'It is agreed between the parties hereto that seller sells said fuel *on the credit of the several vessels* to which deliveries may be made hereunder, as well as on the promise of buyer to pay therefor.'" (*The Golden Gate*, 52 Fed. (2d) 400)

From this quotation it is apparent that if the Circuit Court of Appeals for the Ninth Circuit was influenced in any degree by the sales contract between the supplier and the charterer, the case is not in point, since the terms of the contract there are in direct contrast to the terms of the contract between the respondent and W. L. Comyn & Sons. In the one case, the supplier made an express provision preserving its lien; in the other case, it made express provisions tantamount to a relinquishment of its lien.

As to *The Everosa*, 93 Fed. (2d) 732, upon which respondent also relied in the appellate court, while the opinion in that case makes recitals disclosing a somewhat comparable general contract for the sale and purchase of coal between the supplier and the charterer of the vessel, the First Circuit Court of Appeals makes no ruling upon the existence or non-existence of a maritime lien as the result of such contract. The scope of the court's inquiry and conclusion was confined to a question as to the time when title to the coal passed. The opinion of the court itself says as much:

> "The decisive question is whether in each instance title to the coal passed at Boothton, or not until the coal was put on board at Mobile. It is to be determined, as both parties agree, on the Alabama Sales Act, (citation) as interpreted by the Supreme Court of that state." (p. 734) * * * We think that the District Judge fell into clear error in the holding that the title to the coal passed to the Munson Line at Boothton and consequently that

no lien arose. (p. 735)" (*The Everosa*, 93 Fed. (2d) 732, 734, 735)

Nevertheless, in fairness to respondent and to this Court, admission is due that in *The Everosa, supra*, there did exist between the supplier of the coal and the charterer a contract with some terms comparable to provisions in the fuel oil contract between respondent and W. L. Comyn & Sons. It was because of such similarity that the trial court denied a lien to the supplier. (*The Everosa*, 18 Fed. Sup. 186) However, petitioners are entitled to observation that the question decided by the District Court was apparently lost in the Circuit Court of Appeals by its interest in the question as to when title passed—a question analogous to that decided by this Court in *Piedmont etc. Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1.

Unlike *The Everosa, supra*, the court in *The Cratheus*, 263 Fed. 693 (C. C. A. 5), seemed influenced in its denial of a maritime lien by the supplier's sales contract binding it to furnish all fuel required by its buyers for "steamers of which they are owners, charterers or time charterers, or in which they are otherwise interested" (P. 693).

Thus far, argument of petitioners has been addressed mainly to those aspects of respondent's fuel oil contract with W. L. Comyn & Sons which show that respondent intended to rely upon the personal credit of its buyer as the source of future payment; that respondent was definitely committed to sell to W. L. Comyn & Sons long before the charters covering the "Brand" and the "Stjerneborg" were executed; and that respondent was legally bound to make oil deliveries on the order of its buyer regardless of the latter's lack of future authority to pledge the credit of those vessels. All these phases of respondent's contract were inconsistent with a present intention by respondent to acquire the protection of a maritime lien. And all these considerations are important in view of the holding of this Court "that an express renunciation of the lien is not essential." (*The President Arthur*, 279 U. S. 658)

Although an express relinquishment of the martime lien is not necessary to petitioners' position, respondent in fact inserted into its sales contract as originally effective with Anglo Canadian Shipping Coy., Ltd., a provision which was the practical equivalent:

> "This contract and the interpretation hereof, shall be governed by the laws of the State of California" (R. 52; Ex. A)

This agreement respecting the applicable laws was continued effective in the contract as modified with W. L. Comyn & Sons, by the understanding that:

> "Said contract as above modified, and all of the terms and provisions thereof, is hereby ratified and confirmed." (R. 58, 59; Ex. D)

With respect to this clause as to the law governing the contract, principles of contract interpretation require that it be accorded full operative effect, in the absence of other language within the contract forcing a limitation upon the otherwise plain meaning.

As a necessary consequence, respondent actually renounced the maritime lien—a result unavoidable, since upon the well recognized principle of the maritime law, entrusted to the Federal government to preserve uniformity, no state is permitted to create a maritime lien enforceable in rem by proceedings in admiralty.

Upon this point this Court, referring to the Maritime Lien Act of 1910, and the Congressional Committee reports, stated that one of the purposes of the Act was:

> "Third, to substitute a single federal statute for the state statutes in so far as they confer liens for repairs, supplies and other necessaries. *Peyroux* v. *Howard*, 7 Pet. 324. The reports expressly declare that the bill makes 'no change in the general principles of the present law of maritime liens, but merely substitutes a single statute for the conflicting state statutes.'" (*Piedmont etc. Coal Co. v. Seaboard Fisheries Co.*, 254 U. S. 11)

Perhaps this quotation is superfluous, since the Act of 1920, by which the Act of 1910 was carried forward with slight modification, contains express provision to the same effect:

> "This section shall supersede the provisions of all state statutes conferring liens on vessels, in so far as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of dry dock or marine railway and other necessaries." (46 U. S. C. A. sec. 975)

Reviewing the fuel oil contract in an attempt to sense respondent's serious purpose for inserting the clause under consideration, it would appear that respondent, having in mind California as its own corporate domicile, and having in contemplation deliveries of fuel oil to vessels designated by Anglo Canadian Shipping Coy., Ltd. of Canada in various jurisdictions named in the contract (California, Oregon, Washington, Canal Zone and Hawaiian Islands—R. 48, 58) elected for the sake of uniformity and for reasons of advantage best known to itself, to require that its dealings be governed by the laws of California, to the exclusion of the state laws operative in Washington and Oregon, to the exclusion of the federal laws operative at the Canal Zone, to the exclusion of the federal and territorial laws operative in the Hawaiian Islands, and to the exclusion of the maritime laws of the United States. It would seems to petitioners that no other conclusion can be reached, in view of the fact that if respondent desired any other laws than those of the State of California to be operative in respect to its contract or the interpretation thereof, it was a most simple matter to make express provision therefor so long as that subject was being covered by express agreement. Hence, petitioners contend that whatever conclusion this Court may reach as to the effect of other provisions within respondent's fuel oil contract inconsistent with reliance upon a maritime lien, it must be logically held that the California laws, having been made applicable by respondent for its

own benefit, respondent is bound by its choice and may not now disregard the provision in order to obtain a lien which the laws of the State of California were incapable of creating in respect to a maritime transaction.

With respect to the power of respondent to choose the law by which its contract rights and obligations were to be governed, the textbooks and judicial opinions harmonize in recognition of the principle that parties to a contract may select the controlling law in the absence of fraudulent purpose or prohibitive public policy. (Page on Contracts, 2nd Edition, sec. 3571, p. 6171; Page on Contracts, 2nd Edition, sec. 2048, p. 3543; 12 C. J. 451; 13 C. J. 247, 248, 251, 423; 6 R. C. L. sec. 243, p. 855; Carver on Carriage of Goods by Sea, 8th Edition, sec. 210, p. 315.) On this subject, in a suit upon a marine insurance policy, this Court said:

> "* * * the interpretation of the contract was intended by the parties to depend upon the principles of English law as they obtained and were recognized in England by the usages prevailing at Lloyds. This is what the parties expressly stipulated for and it is no injustice to the company to decide its rights according to the principles of the law of the country which it has agreed to be bound by so long as, in a case like this, the foreign law is not in any way contrary to the policy of our own. See *Liverpool & G. W. Steam Co.* v. *Phenix Ins. Co.* (*'The Montana'*) 129 U. S. 397, 446, 453 (32: 788, 794, 796)." *London Assurance* v. *Companhia de Moagens, etc.*, 167 U. S. 149, 162.

In another decision by this Court it appeared that a bill of lading executed in the United States for carriage of goods on a British ship contained a provision exempting the carrier from negligence, a clause valid under the British law but invalid under the maritime laws of the United States for reasons of public policy. Relative to the rights of the parties to agree with respect to the law governing their contract, in the absence of restrictions created by public policy, this Court said that the contract was to be governed by the law of the place where made "unless the parties when entering into the contract clearly manifest a mutual inten-

tion that it shall be governed by the law of some other country". *Liverpool etc. v. Phenix Ins. Co.*, 129 U. S. 397, 462. The same principle is recognized by this Court in *Boseman v. Connecticut General Life Insurance Co.*, 301 U. S. 196, and in *Pritchard v. Norton*, 106 U. S. 124.

From the authorities generally, it appears that, aside from certain exceptions not applicable here, the established rule permits parties by their agreement to determine the law which shall govern their contract. Respondent by its fuel oil contract with Anglo Canadian Shipping Coy., Ltd., and with W. L. Comyn & Sons required that such contract and its interpretation should be governed by the laws of the State of California. Since under numerous decisions of the admiralty courts and since by Federal statute (46 U. S. C. A. Sec. 975) state legislation may not create maritime liens to be enforced in rem, it would appear useless to inquire relative to the exact provisions of the laws of the State of California concerning a lien, since if the California law authorizes a maritime lien it is invalid, and if the California law authorizes a non-maritime lien, respondent is not seeking to foreclose that lien in the pending litigation (R. 5, 8).

If it be argued in behalf of respondent that by operation of law the maritime laws of the United States were an implied part of respondent's general contract, complete answer would seem contained within the contract itself, for respondent not only inserted the clause expressly incorporating the laws of the State of California, but also respondent inserted another clause expressly excluding other laws by providing that "this instrument contains the entire contract" (Ex. A; R. 53). It is submitted that proper interpretation of respondent's contract leaves no room for any such contention. Respondent's agreement dealt with the subject of the applicable controlling laws both inclusively and exclusively by saying that the "contract and the interpretation hereof shall be governed by the laws of the State of California," and by saying that "this instrument contains the entire contract".

In the Circuit Court of Appeals, respondent argued that when it inserted the provision that "this contract and the interpretation hereof shall be governed by the laws of the State of California," it tacitly and impliedly added the phrase "and the laws of the United States," because some Federal laws are uniformly operative within the boundaries of all states. But this contention violates the well recognized rule of interpretation to the effect that words employed in a contract shall be accorded their natural, normal meaning, unless otherwise clearly shown to have been intended. Petitioners submit that the normal, natural meaning of the phrase "the laws of the State of California" is just that—and not also the laws of the United States. Petitioners submit that such would have been the meaning of the phrase both to laymen and to lawyers, in the absence of modifying context.

Although petitioners are not attempting to invoke the laws of the State of California as governing the rights of respondent and petitioners in the present litigation, this Court may desire to be advised, as did the Circuit Court of Appeals, with respect to whether in 1933 when respondent's contract with W. L. Comyn & Sons became effective, or later in 1934, when respondent made delivery of fuel oil, the laws of the State of California did or did not include a lien statute. In response to this possible inquiry, the fact is that as of those dates the statutes of the State of California did include provisions which purported to allow a right of state lien against a vessel for necessaries supplied within that jurisdiction, to-wit, 1937 Deering Civil Procedure and Probate Code, Sections 813-827 (enacted in 1872 and amended in 1873-74).

It thus appears that petitioners, in urging their contention that respondent's oil contract negatived its reliance upon the credit of the vessels, are presenting a question of first impression so far as this Court is concerned. In the opinion of petitioners, none of the cases upon which respondent contends to the contrary are persuasive on the point. Petitioners submit that the decision upon this phase of the

case by the Circuit Court of Appeals for the Ninth Circuit is out of harmony with maritime lien principles as declared in the maritime lien statutes and as recognized by this Court in *Piedmont etc. Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, and in *The President Arthur*, 279 U. S. 564.

II—CHARTER PARTIES PROHIBITED LIEN

To summarize argument in relation to the second question, petitioners contend that the charter parties made between themselves, as vessel owners, and W. L. Comyn & Sons, as charterer, invested no authority in the charterer to pledge the credit of the vessels for fuel oil, and hence, necessarily prevented the creation of a maritime lien through any purchase thereof by the charterer from the respondent. In the charter parties, the petitioners required and W. L. Comyn & Sons consented: "That the charterers shall provide and pay for all" fuel oil (R. 40, 116, 124, 128, 136). By this agreement all duty to make provision and payment for fuel oil was shifted from the owners to the charterer, which latter, alone, carried the burden of effecting the requisite supplies and of satisfying the resulting debts. Since respondent had knowledge that W. L. Comyn & Sons was not a vessel owner, but merely a charterer or an operator, and since respondent had notice of the particular charter parties covering the "Brand" and the Stjerneborg," it was chargeable with the charterer's lack of authority to bind the petitioners and to pledge the credit of their vessels (R. 41, 37, 38, 39). These facts make directly applicable that provision of the maritime law which says that: "Nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, * * * or for any other reason, the person ordering the * * * supplies * * * was without authority to bind the vessel therefor." (Subsec. R of Sec. 30, Merchant Marine Act of June 5, 1920; 46 U. S. C. A. 973; Appendix.)

Upon this second main contention of petitioners before this Court, neither the District Court (R. 157) nor the Circuit Court of Appeals (R. 226) bestowed any extended discussion. The Circuit Court of Appeals merely cited as controlling its own former decisions in *The Portland*, 273 Fed. 401, and in *The Golden Gate*, 52 Fed. (2d) 397; and observed that these cases had been reexamined by it in *The Luddco*, 66 Fed. (2d) 997. As demonstrated by the petition for writ of certiorari in the pending case (pp. 7, 8, 16, 17), the two earlier decisions of the Circuit Court of Appeals for the Ninth Circuit are in direct conflict with *The Cratheus*, 263 Fed. 693, decided by the Circuit Court of Appeals for the Fifth Circuit.

Since these conflicting decisions attempted to harmonize with the controlling law as declared by this Court and cited its decision in *The South Coast*, 251 U. S. 519, the opinions of this Court may be appropriately analysed first.

The Ninth Circuit Court of Appeals justified the allowance of a maritime lien both in *The Portland*, 273 Fed. 401, and in *The Golden Gate*, 52 Fed. (2d) 397, by reliance upon *The South Coast*, 251 U. S. 519, decided in 1920. In that case, the opinion was written by Mr. Justice Holmes, who noted that a libel *in rem* was filed for supplies furnished to a vessel under bare charter which was met by an answer denying that the master had authority to obligate the vessel by his order for necessaries. The opinion observed that by the charter party it was agreed that the charterer was "to save the owner harmless from all liens or expenses that it might be put to in consequence of such liens" (p. 522); and that the charterer was "to discharge within thirty days any debts which were liens upon it" (p. 522). After considering these special express provisions, the opinion concluded that:

> "The charter-party recognizes that liens may be imposed by the charterers and allowed to stand for less than a month and there seems to be no sufficient reason for supposing the words not to refer to all the ordinary

maritime liens recognized by the law." (*The South Coast*, 251 U. S. 523)

Based upon the conclusion thus stated this Court held that a maritime lien existed against the "S. S. South Coast."

The most recent ruling by this Court as to a maritime lien for necessaries, requiring the construction of a charter party, is *U. S.* v. *Carver*, 260 U. S. 482, decided in 1923. There again the opinion was written by Mr. Justice Holmes. In this case a maritime lien was claimed for supplies ordered not by the master but by the charterer's port captain. The charter parties involved provided that the charterer "will not suffer nor permit to be continued any lien, encumbrance, or charge which has or might have priority over the title and interest of the owner in said vessel" (pp. 487, 488). The supplier knew of no facts tending to show that the charterer was not the owner; but the supplier made no effort to ascertain the relationship of the charterer to the vessels.

In holding that no lien existed, the opinion said:

> "The Act of 1910, by which the transactions with the Clio were governed, after enlarging the right to a maritime lien and providing who shall be presumed to have authority for the owner to procure supplies for the vessel, qualifies the whole in sec. 3 as follows: 'but nothing in this Act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.' We regard these words as too plain for argument. They do not allow the material-man to rest upon presumptions until he is put upon inquiry, they call upon him to inquire. To ascertain is to find out by investigation. If by investigation with reasonable diligence the material-man could have found out that the vessel was under charter, he was chargeable with notice that there was a char-

ter; if in the same way he could have found out its terms he was chargeable with notice of its terms. In this case it would seem that there would have been no difficulty in finding out both. The ship Mortgage Act of 1920 repeats the words of the Act of 1910.

"But it is said that the charter-party if known would have shown that the master at least, if not the agent who ordered the supplies, had authority to impose a lien, since the charter-party contemplated the possibility of one being created and provided for its removal. *The South Coast*, 251 U. S. 519, is cited as establishing the position. *But there is a sufficient difference in the language employed there and here to bring about a different result. In The South Coast the contract went no farther than to agree to discharge liens within a month. Here the primary undertaking was that 'the charterers will not suffer nor permit to be continued any lien,' &c.* We read this as meaning will not suffer any lien nor permit the same to be continued. Naturally there are provisions for the removal of the lien if in spite of the primary undertaking one is imposed or claimed. *But the primary undertaking is that a lien shall not be imposed.*" (Italics supplied.) (*U. S.* v. *Carver*, 260 U. S. 488-490)

Petitioners suggest that in *U. S.* v. *Carver*, *supra*, Mr. Justice Holmes was releasing gentle criticism of his own former opinion in *The South Coast*, *supra;* or, at least, that he was carefully guarding against the language of his earlier opinion being given any broader interpretation than intended. He plainly restricted the decision in *The South Coast*, *supra*, to the particular charter provisions there involved, which were expressly distinguished from the charter clauses presented in the later case.

Since both these decisions (*U. S.* v. *Carver*, 260 U. S. 482; *The South Coast*, 251 U. S. 519) were controlled by special phraseology in the charter parties, petitioners submit that neither is a precedent to which this Court must adhere in the present case.

In the absence of any other decision by this Court construing charter party terms remotely comparable as bear-

ing upon the assertion of a maritime lien since the passage of the Acts of 1910 and 1920, petitioners refer to *The Valencia*, 165 U. S. 264, decided in 1897, and *The Kate*, 164 U. S. 458, decided in 1896. In both those cases the pertinent charter party provisions were the same as the provision in the "Brand" and "Stjerneborg" charters. In both cases this Court held that the charter party invested the charterer with no authority to subject the vessel to a maritime lien.

In *The Valencia*, 165 U. S. 264, a lien was claimed by the supplier of coal delivered to the vessel upon the order of the charterer. The opinion recited that "the corporation operated the steamship under a charter requiring it 'to provide and pay for all the coals'" (p. 265). Also the opinion recited that the supplier was not aware of the existence of the charter party, but nevertheless made no inquiry as to the relations surrounding the vessel or the solvency of the concern ordering the coal. The opinion observed that the supplier in that case (as in the pending litigation) made out its invoices not only to the charterer but also to the "S. S. Valencia and Owners, New York." After such observations as to the facts, before discussion of the legal principles, the opinion said:

> "No fact proved in the case warranted the inference that either the master or the charterer agreed to pledge the credit of the vessel for the coal." *The Valencia*, 165 U. S. 265, 266

Following consideration of previous decisions by various courts the opinion concluded:

> "Under what circumstances, if under any, a charterer who has control and possession of a vessel under a charter party requiring him, at his own cost, to provide for necessary supplies and repairs, may pledge the credit of the vessel, it is not necessary now to determine. We mean only to decide, at this time, that one furnishing supplies or making repairs on the order simply of a person or corporation acquiring the con-

trol and possession of a vessel under such a charter party cannot acquire a maritime lien if the circumstances attending the transaction put him on inquiry as to the existence and terms of such charter party, but he failed to make inquiry, and chose to act on a mere belief that the vessel would be liable for his claim." *The Valencia*, 165 U. S. 272, 273.

In the opinion of this Court just reviewed it cited with approval its own earlier opinion in *The Kate*, 164 U. S. 458. There the supplier of coal sought to enforce a lien both under a New York statute and also under the maritime law. From the recitals of fact in the opinion, it appears that, differing from respondent in the pending litigation, the supplier charged the coal on its books of account not only to the charterer but also to the vessels. After the buyer of coal had become indebted to the supplier for various prior purchases the supplier consented to continue making sales and deliveries upon the understanding that under the New York lien statute it would file certain specifications of lien by which the parties assumed that the supplier was obtaining protection. The concern making purchases of coal from the supplier was both an owner and a charterer of the vessels. "The Kate" was a chartered vessel. The quotations from the charter party made by the opinion of this Court indicate that in many provisions it was comparable to the charter parties covering the "Brand" and the "Stjerneborg." The particular clause obligating the charterer as to fuel was identical. The charter party as to the "Kate" required: "That the charterer shall provide and pay for all the coals * * *" (p. 460).

From the opinion in this case it appears that the supplier knew or could easily have learned that the "Kate" and certain other vessels were operated under charter by the buyer of the coal and that no inquiry was made to ascertain the actual facts, the supplier being satisfied to make no distinction between vessels owned by the buyer and vessels chartered by the buyer. The coal was furnished

upon the order of the charterer. In selling the coal the supplier in fact relied upon the credits of both the charterer and the vessel.

By way of conclusion, the opinion said:

> "Touching the first of these grounds, the contention of the libellant is, that the stipulation in the charter party binding the charterer to pay for all coal was only an executory agreement, for the breach of which the owner could hold the charterer personally responsible; that the law will not permit the owner and the charterer, by agreement, express or implied, to withdraw the vessel from the operation of a lien in favor of those who furnish supplies to it in a foreign port; that even actual knowledge, upon the part of the person furnishing supplies, that the charterer had agreed himself to furnish, at his own expense, the coal needed by the vessel, was wholly immaterial under the New York statute.
>
> "We are of opinion that, as the libellant knew, or, under the circumstances, is to be charged with knowledge, that the charter party under which the Kate was operated obliged the charterer to provide and pay for all the coal needed by that vessel, no lien can be asserted under the maritime law for the value of coal supplied under the order of the charterer, even if it be assumed that the libellant in fact furnished the coal upon the credit both of the charterer and of the vessel. *As the charterer had agreed to provide and pay for all coal used by the vessel, he had no authority to bind the vessel for supplies furnished to it. His want of authority to charge the vessel for such an expense was known or could have been known to the libellant by the exercise of due diligence on its part. Under the circumstances, the libellant was not entitled to deliver the coal on the credit of the vessel, and its attempt to hold the vessel liable is in bad faith to the owner. The law cannot approve or encourage such an attempt to wrong the owners of the vessel.* Neither reason nor public policy forbade the owner and the charterer from making the arrangement evidenced by the charter party of December 15, 1892. The master of a ship is regarded as 'the confidential servant or agent of the owners, and

they are bound to the performance of all lawful contracts made by him, relative to the usual employment of the ship, and the repairs and other necessaries furnished for her use. This rule is established as well upon the implied assent of the owners, as with a view to the convenience of the commercial world.' *The Aurora*, 1 Wheat. 95, 101. 'The vessel must get on,' and 'the necessities of commerce require, that when remote from the owner, he (the master) should be able to subject his owner's property to that liability, without which, it is reasonable to suppose, he will not be able to pursue his owner's interests.' *The St. Iago de Cuba*, 9 Wheat. 409, 416; *The J. E. Rumbell*, 148 U. S. 1. When, therefore, supplies are furnished to a vessel in a foreign port, upon the order of the master, nothing else appearing, the presumption is that they were furnished on the credit of the vessel and of the owners, and an implied lien is given. But no such necessity can be suggested, and no such reasons urged, in support of an implied lien for supplies furnished to a charterer, when the libellant at the time knew, or by such diligence as good faith required could have ascertained that the party upon whose order they were furnished was without authority from the owner to obtain supplies on the credit of the vessel, but had undertaken, as between itself and the owner, to provide and pay for all supplies required by the vessel.

"There are many cases in which the recognition or rejection of liens under the maritime law have depended upon the diligence of parties in ascertaining the limitations imposed by the owners of vessels upon the authority of masters. These cases proceed upon the ground that good faith must have been exercised by the party seeking to enforce a lien upon the vessel. As they throw light upon the present inquiry, it is proper to refer to some of them." (Pp. 465, 466) (Italics supplied). * * *

"The principle would seem to be firmly established that when it is sought to create a lien upon a vessel for supplies furnished upon the order of the master, the libel will be dismissed if it satisfactorily appears that the libellant knew, or ought reasonably to be charged with knowledge, that there was no necessity for obtain-

ing the supplies, or, if they were ordered on the credit of the vessel, that the master had, at the time, in his hands, funds which his duty required that he should apply in the purchase of needed supplies. Courts of admiralty will not recognize and enforce a lien upon a vessel when the transaction upon which the claim rests originated in the fraud of the master upon the owner, or in some breach of the master's duty to the owner, of which the libellant had knowledge, or in respect of which he closed his eyes, without inquiry as to the facts.

"If no lien exists under the maritime law, when supplies are furnished to a vessel upon the order of the master, under circumstances charging the party furnishing them with knowledge that the master cannot rightfully, as against the owner, pledge the credit of the vessel for such supplies, much less is one recognized under the law where the supplies are furnished, not upon the order of the master, but upon that of the charterer who did not represent the owner in the business of the vessel, but who, as the claimant knew, or by reasonable diligence could have ascertained, had agreed himself to provide and pay for such supplies, and could not, therefore, rightfully pledge the credit of the vessel for them." (Pp. 469, 470) * * *

It is unnecessary for the decision of this case to consider whether the statute of New York, if interpreted as claimed by the libellant, would be repugnant to the commerce clause of the Constitution. *We decide only that libellant has no lien on the vessel under the maritime law*, and that the statute of New York, reasonably construed, does not assume to give a lien where supplies are furnished to a foreign vessel upon the order of the charterer, with knowledge upon the part of the person or corporation furnishing them, that the charterer does not represent the owners, but by contract with them has undertaken to furnish such supplies at his own cost." (P. 471) (Italics supplied) The Kate, 164 U. S. 465-471.

Thus, it develops that this Court has previously construed the same charter party provision which is the gist of the controversy between respondent and petitioners.

The facts in *The Valencia, supra,* and in *The Kate, supra,* were in many respects much more favorable to the supplier than the facts upon which respondent must rely in the present case. Yet in both instances this Court held that no lien existed because the charterer was not authorized to bind the vessel for fuel by a charter which required it "to provide and pay for all coals."

Neither in *The South Coast, supra,* nor in *U. S.* v. *Carver, supra,* did this Court discuss the earlier decisions in *The Valencia, supra,* and in *The Kate, supra*—doubtless for the reason that the later cases involved very different issues for interpretation. Further, nothing was said in the more recent cases which reflected any disapproval of the principles or the conclusions of the older opinions. Therefore, since this Court has joined with the Congressional Committee Reports (254 U. S. 11) in indicating that the Acts of 1910 and 1920, except in particulars not here material, made no basic change in the elements of the lien for vessel necessaries as recognized by the general maritime law, this Court's rulings in *The Valencia, supra,* and in *The Kate, supra,* continue to be authoritative. But those rulings were disregarded by the Ninth Circuit Court of Appeals in *The Portland,* 273 Fed. 401, and *The Golden Gate,* 52 Fed. (2d) 397.

In those two cases by the inferior appellate court it expressly relied upon *The South Coast,* 251 U. S. 519, which was considered as being controlling. However, with all due respect, petitioners suggest that because of the particular charter party clause involved there *The South Coast, supra,* was simply not in point in those cases and is not now applicable in the pending case. In this opinion petitioners are supported by *The Crathens,* 263 Fed. 693 (C. C. A. 5) which discussed *The South Coast, supra,* shortly after it was decided and reported.

In that case coal was ordered by the charterer, not by the master of the vessel; and the supplier could easily have ascertained that the charter party obligated the charterer "to provide and pay for all coal" (p. 694). Like the "Brand" and "Stjerneborg" charters it said nothing

about the charterer discharging liens. The District Court had denied a maritime lien. On the basis of these facts, when the Circuit Court of Appeals was asked to allow a maritime lien in favor of the supplier because of the decision in *The South Coast, supra*, it said:

> "There are material differences between the facts of the instant case and those of the case of South Coast S. S. Co., Claimant v. Rudbach (March 1, 1920) 251 U. S. 519, 40 Sup. Ct. 233, 64 L. Ed. ——. In the case cited the supplies were furnished to the ship on the order of its master under authority given by the charterers, and the charter party recognized that liens might be imposed by the charterers. In the instant case the coal was ordered, not by the master, but by the charterers, who were not expressly or impliedly given authority to subject the vessels to liens for supplies. The case cited is not authority for the proposition that a vessel may be subjected to a lien for the price or value of supplies furnished to a charterer who is without authority to bind the vessel or its owner therefor. The coal now in question having been procured, not by any one having authority to bind the vessel for it, but by the charterers, who, under the terms of the charter party, were, as the furnisher understood, required to pay for such supplies, it is not material that the furnisher thought that the vessel was responsible.
>
> "The conclusion being that the ruling complained of was not erroneous, the decree is affirmed." *The Cratheus*, 263 Fed. 695.

Two years after its decision in *The Cratheus, supra*, the Fifth Circuit Court of Appeals again held that the same charter party language was insufficient to give a charterer authority to create a lien, in the case of *Pensacola S. Co.* v. *U. S. Shipping Board*, 277 Fed. 889.

Within other federal jurisdictions petitioners are supported in their conclusion that *The South Coast, supra*, is not in point and that *The Portland, supra*, and *The Golden Gate, supra*, were erroneously decided by the Ninth Circuit Court of Appeals. *The Pajala*, 7 Fed. Supp. 618 (E. D. N. Y. 1934) is illustrative. There the facts were similar to those

in the pending case. While that litigation never reached the Second Circuit Court of Appeals, in the District Court it was held that a like charter party did not serve the supplier as a basis for a lien. And after discussing the conflict of decisions at some length, the District Court concluded by saying:

> "The choice of following the law as announced in this court, rather than the two decisions in the Ninth Circuit, is deliberate and in the belief that correction, if it be appropriate, lies elsewhere." *The Pajala*, 7 Fed. Supp. 621.

The strained and artificial rule upon the charter point under discussion, adopted by the Ninth Circuit Court of Appeals, has often been questioned or disapproved: *The Thordis*, 290 Fed. 255; *Ville de Djibouti*, 295 Fed. 869; *The Dictator*, 18 Fed. (2d) 131; *The Ben Lawers*, 42 Fed. (2d) 897.

Time and utility prevent review of the almost innumerable cases decided by the inferior admiralty courts which are more or less remotely related. Hence, petitioners omit additional references to judicial rulings in the belief that this Court has already decided the question in *The Valencia*, *supra*, and in *The Kate*, *supra*, against the existence of a maritime lien based upon supplies ordered by a charterer whose charter party obligated it "to provide and pay for" the same. And, after all (apart from judicial confusion), the question of authority arising from the charter party is the rather simple problem of the interpretation of most ordinary words requiring that the charterer "*shall provide and pay for all*" fuel. By this language the vessel owner obligated the charterer to make the arrangement for fuel and to bear the financial expense. By this language the vessel owner obligated the charterer to create and satisfy the debt. This obligation to the vessel owner having been performed, no maritime lien *could* arise, since the lien is merely a resultant right or remedy which is born with the debt and which must die when the debt is paid.

CONCLUSION.

Wherefore, petitioners pray:

(1) That this Court will conclude that respondent's oil contract negatived any maritime lien, and petitioners' charter party invested in the charterer no authority to create any maritime lien for fuel oil;

(2) That this Court will reverse the ruling and decision of the Circuit Court of Appeals for the Ninth Circuit;

(3) That this Court will direct the Circuit Court of Appeals for the Ninth Circuit to order a dismissal of both the libel against the "Brand" and the libel against the "Stjerneborg."

Respectfully submitted,

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APPENDIX.

Maritime Liens for Necessaries.

(Subsection P, Q, R, S and T of Section 30 of Merchant Marine Act of June 5, 1920; 46 U. S. C. secs. 971-975)

"Subsection P. Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*, and it shall not be necessary to allege or prove that credit was given to the vessel. (46 U. S. C. 971.)

"Subsection Q. The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is entrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel. (46 U. S. C. 972.)

"Subsection R. The officers and agents of a vessel specified in subsection Q shall be taken to include such officers and agents when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel; but nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor. (46 U. S. C. 973.)

"Subsection S. Nothing in this section shall be construed to prevent the furnisher of repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, or the mortgagee, from waiving his right to a lien; or in the case of a preferred mortgage lien, to the preferred status of such lien, at any time, by

agreement or otherwise; and this section shall not be construed to affect the rules of law now existing in regard to (1) the right to proceed against the vessel for advances, (2) laches in the enforcement of liens upon vessel, (3) the right to proceed *in personam*, (4) the rank of preferred maritime liens among themselves, or (5) priorities between maritime liens and mortgages, other than preferred mortgages, upon vessels of the United States. (46 U. S. C. 974.)

"Subsection T. This section shall supersede the provisions of all state statutes conferring liens on vessels, in so far as such statutes purport to create rights of action to be enforced by suits *in rem* in admiralty against vessels for repairs, supplies, towage, use of dry-dock or marine railway and other necessaries." (46 U. S. C. 975.)

The above provisions, sometimes referred to as being a part of the "Ship Mortgage Act of 1920" (279 U. S. 567) superseded, but substantially reenacted, the provisions of the 1910 "Maritime Lien Act", which read as follows:

"Act of June 23, 1910,
Ch. 373, 36 Stat. 604,

'An Act relating to liens on Vessels for repairs, supplies or other necessaries.'

"Section 1. That any person furnishing repairs, supplies, or other necessaries, including the use of dry dock or marine railway, to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessel, or of a person by him or them authorized, shall have a maritime lien on the vessel which may be enforced by a proceeding in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

"Section 2. That the following persons shall be presumed to have authority from the owner or owners to procure repairs, supplies and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is entrusted. No person tortiously

or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

"Section 3. That the officers and agents of a vessel specified in Section 2 shall be taken to include such officers and agents when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel, but nothing in this Act shall be construed to confer a lien when the furnisher knew, or by the exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.

"Section 4. That nothing in this Act shall be construed to prevent a furnisher of repairs, supplies, or other necessaries from waiving his right to a lien at any time, by agreement or otherwise; and this Act shall not be construed to affect the rules of law now existing, either in regard to the right to proceed against a vessel for advances, or in regard to laches in the enforcement of liens on vessels, or in regard to the priority or rank of liens, or in regard to the right to proceed *in personam*.

"Section 5. That this Act shall supersede the provisions of all state statutes conferring liens on vessels in so far as the same purport to create rights of action to be enforced by proceedings *in rem* against vessels for repairs, supplies, and other necessaries."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 662.

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Mortorship "Stjerneborg," and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "Brand," *Petitioners*,

v.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation, *Respondent*.

PETITIONERS' REPLY BRIEF.

Upon Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 662.

DAMPSKIBSSELSKABET DANNEBROG, a corporation, Claimant of the Mortorship "Stjerneborg," and AKTIESELSKABET BORGESTAD, a corporation, Claimant of the Motorship "Brand," *Petitioners,*

v.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a corporation, *Respondent.*

PETITIONERS' REPLY BRIEF.

Upon Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

INTRODUCTION.

In reply, petitioners follow the order of the respondent's answering brief, discussing:

1. The question of the charterer's authority to bind the vessels and their owners, arising from the charter party;

2. The question of respondent's credit reliance upon the vessels, arising from its general contract.

LIEN NOT AUTHORIZED BY CHARTER.

The charter parties of petitioners, as vessel owners, provided that "*the charterers shall provide and pay for all*" the fuel oil (R. 40). By this simple clause petitioners passed to the charterer and the charterer took to itself the whole responsibility as to fuel for the operation of the vessels.

Respondent's brief (pp. 3-4) says that by this provision petitioners empowered the charterer to order fuel oil. Petitioners reply that by this provision they obligated the charterer to do so. But this same provision equally and inseparably authorized and bound the charterer to pay for the fuel oil. There was no power vested in the charterer to provide, which was free from the duty to pay. Respondent may not divorce the two elements of this single duty entirely shifted from the vessel owners to the charterer by lawful agreement.

Petitioners' brief (p. 37) has asserted that the charter parties invested the charterer with no authority to pledge the credit of the vessels and impose a lien for fuel oil. In this, petitioners rely not only on principle but also on precedent. By petitioners' brief (pp. 41-46) this Court is referred to its own rulings in *The Kate*, 164 U. S. 458, and in *The Valencia*, 165 U. S. 264. In both cases the charter parties required that the "charterers shall provide and pay for" fuel without other language expressly negativing the charterer's authority. In both cases this Court held that from such words the charterer acquired no authority to hypothecate the vessels. In both the lien was denied. And petitioners contend that these decisions, based on closely comparable facts, fully support their position.

Respondent claims that these decisions are distinguishable, although its brief (p. 13) admits that they have never been criticized by any subsequent interpretation of this Court.

To distinguish *The Kate* and *The Valencia*, respondent says that this Court was there influenced to its exoneration

of the vessels by an element of fraud in the dealings between the supplier and charterer on which the lien was asserted. It is true that the opinion in *The Kate*, 164 U. S. 458, 465-470, while discussing earlier cases, does use the word "fraud" as applied to a supplier's claim of lien based on transactions with a master, as the owner's confidential agent, where the supplier had knowledge or notice that the master was without actual authority. But if the characterization of fraud was indirectly applied by this Court to the conduct of the suppliers in *The Kate*, *supra*, and also in *The Valencia*, *supra* (by the latter's quotation of the former), it still does not follow that those cases are distinguished on that ground from the present case. The transactions and the conduct of the lien claimants in those cases were not materially different from the activity and attitude of respondent in the present case. However, in commenting on the facts under immediate consideration, the opinion in *The Kate*, *supra*, did not charge actual fraud. Without use of so blunt a word, petitioners join with this Court in its description of a supplier's sale to an unauthorized charterer and a subsequent attempt to enforce a lien against the vessel.

> "As the charterer had agreed to provide and pay for all coal used by the vessel, he had no authority to bind the vessel for supplies furnished to it. His want of authority to charge the vessel for such an expense, was known or could have been known to the libellant by the exercise of due diligence on its part. Under the circumstances, the libellant was not entitled to deliver the coal on the credit of the vessel, and its attempt to hold the vessel liable is in bad faith to the owner. The law cannot approve or encourage such an attempt to wrong the owners of the vessel." *The Kate*, 164 U. S. 458, 465.

And while *The Kate*, *supra*, was quoted in *The Valencia*, 165 U. S. 264, 267, the later case denied the lien by recital of ultimate facts there involved without colorful insinuation of fraud, by saying:

"We mean only to decide, at this time, that one furnishing supplies or making repairs on the order simply of a person or corporation acquiring the control and possession of a vessel under such a charter party cannot acquire a maritime lien if the circumstances attending the transaction put him on inquiry as to the existence and terms of such charter party, but he failed to make inquiry and chose to act on a mere belief that the vessel would be liable for his claim." *The Valencia*, 264, 272.

For another reason respondent argues that *The Kate*, *supra*, and *The Valencia*, *supra*, are distinguishable. It says that those cases were decided before the passage of the Maritime Lien Act (Act of June 23, 1910; 36 Stat. 604) and its substantial reenactment in Section 30 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. 971-975). To this point, respondent's brief (p. 14) cites the opinions of two lower courts: *The South Coast*, 247 Fed. 84 (C. C. A. 9) and *The J. W. Hennessy*, 57 Fed. (2d) 77 (C. C. A.). Both these opinions mentioned *The Kate* and *The Valencia*. But the appellate courts were passing upon demise charters containing very different provisions. Hence, they treated *The Kate* and *The Valencia* as not controlling. But neither court advanced any persuasive theory for concluding that the older decisions of this Court had become obsolete because of the subsequent Congressional legislation.

In *The J. W. Hennessy*, 57 Fed. (2d) 77, the opinion made no attempt to explain wherein the statute had deprived *The Kate* and *The Valencia* of their authoritative interpretation of the charter provisions involved in those cases. In fact, the opinion wisely did not even make any such statement. To do so would have been dictum since the charter party there in dispute was a "demise charter" by which "the charterer had exclusive use, control, possession and operation" of the vessel (p. 77). Reference in the opinion to *The Kate* and *The Valencia* was limited to the observation that: "*The Kate*, 164 U. S. 458, 17 S. Ct. 135, 41 L. Ed. 512, and *The Valencia*, 165 U. S. 264, 17 S. Ct. 323, 41 L. Ed. 710,

related to supplies furnished upon the order of a charterer prior to the passage of the Merchant Marine Act." The *J. W. Hennessy*, 57 Fed. (2d) 80.

In *The South Coast*, 247 Fed. 84, the district judge who wrote the opinion was considering another demise charter and determining whether necessaries ordered by the *master* (not the charterer) would entitle the supplier to a lien. While the opinion discussed the facts there pertinent, in contrast to the facts in *The Kate* and *The Valencia*, it never expressed the notion that those rulings of this Court were superseded by the 1910 Act. On the contrary, the district judge recognized their continuing vigor of authority by saying: "These cases of *The Kate* and *The Valencia* are therefore *without application, further than they purport to state general maritime law*". (Italics added) *The South Coast*, 247 Fed. 89, 90. Doubtless for the same reason, when that case was affirmed over the dissent of three members of this Court, no opinion discussed *The Kate* nor *The Valencia* which involved provisions unlike those in the "South Coast" demise but identical with those in the "Brand" and "Stjerneborg" charters. *The South Coast*, 251 U. S. 519.

Respondent has wholly failed to demonstrate that the rulings of *The Kate* and *The Valencia* have been superseded by the 1910 and 1920 Acts, because they really continue authoritative within their sphere of application.

The Kate and *The Valencia*, so far as invoked by the petitioners, held that a charter party provision requiring the charterer to "provide and pay for" fuel vests the charterer with no power to pledge the owner's vessel, and that a furnisher of supplies on the order of such a charterer, when the furnisher "knew or by reasonable diligence could have ascertained" such absence of power is not entitled to a lien. The subsequent legislation said nothing affecting judicial interpretation of any charter party. The later statutes not only did not abrogate this Court's rule placing upon the furnisher the burden to inquire, but they adopted and de-

clared the same rule (Section 3 of 1910 Act; Subsection R of 1920 Act).

In this connection, the Court is referred to the article entitled "The New Federal Statute Relating to Liens on Vessels" by Fitz-Henry Smith, Jr., (one instrumental in drafting the 1910 Act) which was published in January, 1911, by the Harvard Law Review, Volume 24, p. 182, et seq. The author, when discussing (p. 193) the same part of the statute, said:

> "The phrase, 'knew, or by the exercise of reasonable diligence, could have ascertained,' is adopted from The Kate, and was used in the Act of Congress to make it clear that if the furnisher know of the existence of a charter party or of an agreement for the sale of the vessel, he is put upon inquiry as to its terms, and cannot excuse himself by denying ignorance of the terms, *should it turn out that the charterer or agreed purchaser had undertaken to furnish the vessel at his own cost.*" (Italics supplied)

In notes published in 1935 by the Yale Law Journal, Volume 44, p. 698, *The Kate* is recognized as still declaring the law that no lien arises where supplies are ordered by one without authority to bind the vessel and the furnisher had knowledge or means of knowledge of such lack of authorization.

This Court has reiterated the opinion that, except in particulars not here material, the 1910 and 1920 statutes did not modify the general maritime law as to liens for necessaries. *The President Arthur*, 279 U. S. 564, 567, 568; *U. S.* v. *Carver*, 260 U. S. 482, 489; *Piedmont, etc., Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, 11, 12; *The South Coast*, 251 U. S. 519, 523. And similar opinion has been indicated by the inferior admiralty courts in *The Western Wave*, 77 Fed. (2d) 695 (C. C. A. 5); *The Roseway*, 34 Fed. (2d) 130 (C. C. A. 2); *Morse D. D. & Repair Co.* v. *U. S.*, 1 Fed. (2d) 233 (C. C. A. 2); *Pensacola S. Co.* v. *U. S. Shipping Board*, 277 Fed. 889 (C. C. A. 5); *The Cratheus*, 263

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While since the passage of the maritime lien statutes this Court has not had occasion to approve its rulings in *The Kate*, 164 U. S. 458, and *The Valencia*, 165 U. S. 264, either one or both of those cases have been recognized as authoritative where applicable, or have been expressly followed by the lower courts since the 1910 Act. *Starita Co.* v. *Compagnie Havraise, etc.*, 52 Fed. (2d) 58 (C. C. A. 2); *Pensacola S. Co.* v. *U. S. Shipping Board*, 277 Fed. 889 (C. C. A. 5); *The Yarmouth*, 262 Fed. 250 (C. C. A. 5); *The Hatteras*, 255 Fed. 518 (C. C. A. 2); *The Yankee*, 233 Fed. 919 (C. C. A. 3); *The Pajola*, 7 Fed. Supp. 618 (D. C. N. Y.); *The Henry W. Breyer*, 17 Fed. (2d) 423 (D. C. Md.); *Ville de Djibouti*, 295 Fed. 869 (D. C. Pa.); *The Thordis*, 290 Fed. 255 (D. C. N. Y.); *The Millinocket*, 266 Fed. 392 (D. C. N. Y.).

In cases not reaching this Court, "provide-and-pay" provisions, similar to those in the "Brand" and "Stjerneborg" charter parties, have been considered not to authorize the charterer to bind the vessels and their owners. *The Pajola*, 7 Fed. Supp. 618 (D. C. N. Y.); *The Ben Lawers*, 42 Fed. (2d) 897 (D. C. Wash.); *The Dictator*, 18 Fed. (2d) 131 (D. C. La.); *The Henry W. Breyer*, 17 Fed. (2d) 423 (D. C. Md.); *Ville de Djibouti*, 295 Fed. 869 (D. C. Pa.); *The Thordis*, 290 Fed. 255 (D. C. N. Y.); *The Millinocket*, 266 Fed. 392 (D. C. N. Y.); *The Eastern*, 257 Fed. 874 (D. C. Mass.); *The Sylvan Glen*, 241 Fed. 731 (D. C. La.); *Starita Co.* v. *Compagnie Havraise, etc.*, 52 Fed. (2d) 58 (C. C. A. 2); *The Hammond*, 30 Fed. (2d) 890 (C. C. A. 5); *The Penza*, 9 Fed. (2d) 527 (C. C. A. 2); *The Mona*, 282 Fed. 468 (C. C. A. 4); *Pensacola S. Co.* v. *U. S. Shipping Board*, 277

Fed. 889 (C. C. A. 5); *The Cratheus*, 263 Fed. 693 (C. C. A. 5); *The Yarmouth*, 262 Fed. 250 (C. C. A. 5).

Petitioners submit that respondent has failed both by its own argument and by its citation of lower court opinions to demonstrate any weakness in this Court's former rulings in *The Kate*, 164 U. S. 458, and *The Valencia*, 165 U. S. 264. Because these decisions rest on sound interpretations of charter party clauses which are the same as those in the "Brand" and "Stjerneborg" charters, it follows that W. L. Comyn & Sons, as the charterer, had no authority by which respondent could acquire a lien.

Respondent's brief (pp. 18, 19) almost ventures the hint that it was not chargeable with petitioners' limitation upon the charterer's authority. But no serious contention to this effect is open to respondent. By the general contract which respondent made for future sales to W. L. Comyn & Sons that concern was accepted as a buyer for oil to be supplied later to "any and all vessels owned, chartered and/or operated" by it (R. 32, 58; Ex. D). This contract was effective as to W. L. Comyn & Sons in May, 1933 (R. 32). And respondent has stipulated in this case that, both before and after that time, it knew or could have easily learned that W. L. Comyn & Sons was in business, not as a vessel owner, but as a commission merchant, a freight contractor and broker, and as a operator of vessels, sometimes for owner's account and sometimes for charterer's account (R. 41). All this respondent knew approximately a year before it filled orders of W. L. Comyn & Sons in 1934 for the petitioners' vessels. As to the "Brand", its chief engineer accepted in April and again in May a supply to that vessel only "*for time charterer's account*", according to each of his qualified written receipts given at the time of successive deliveries (R. 37-38). As to the "Stjerneborg", in ordering fuel oil W. L. Comyn & Sons especially advised respondent that such vessel was then "on our time charter" (R. 38). To all these facts respondent has stipulated (R. 31-154).

Subsection R, Section 30, of the 1920 statute said that no lien shall be conferred "when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, * * * the person ordering the * * * supplies * * * was without authority to bind the vessel therefor" (46 U. S. C. A. 973).

Hence, coupling this Court's interpretation of the charter party provision in *The Kate*, *supra*, and *The Valencia*, *supra*, with the rule of those cases as affirmed by the statute, it follows that the question of authority in this case should be resolved against respondent and its claim of lien.

Respondent's brief (p. 4) insists that *The South Coast*, 251 U. S. 519, is controlling. Petitioners repeat their assertion that it is not in point. The opinion in that case shows that different charter terms reflected an intention that lien might be imposed by the charterer. In this case no language reflects any such intention by petitioners. The opinion in that case shows that "the master ordered" the supplies (p. 522). In this case, the supplies were sold solely on the charterer's order (R. 37, 38, 39). The opinion in that case shows that the charter party was a demise—"the bare vessel at the time was under charter" (p. 522). In this case, the charter was not a demise—the charter party by clause 25 expressly declared to the contrary: "Nothing herein stated is to be construed as a demise of the steamer to the time charterers" (R. 124, 135).

In consequence, upon the charter point respondent's claim of lien fails.

LIEN NEGATIVED BY OIL CONTRACT.

As to the question of respondent's exclusive credit reliance upon the personal obligation of W. L. Comyn & Sons with whom it dealt under its general sales contract, the respondent's brief (pp. 16-22) offers very little in answer to the contention of petitioners.

Respondent tacitly confesses that it, too, is unable to cite any opinion by this court determining the effect upon a

maritime lien of a future supply contract like respondent's, which bound it to furnish fuel for "any and all vessels" which might be subsequently "owned, chartered and/or operated" (R. 32).

The respondent comments on the decisions in the *President Arthur*, 279 U. S. 564, and *Piedmont etc. Coal Co.* v. *Seaboard Fisheries Co.*, 254 U. S. 1, as if petitioners had cited them as being squarely in point on the facts. Admittedly they involved different contracts. Petitioners turned to those cases simply to quote this court's statements of applicable principle.

Directed to the question of respondent's credit reliance arising out of its contract, respondent cites only two cases: *The Everosa*, 93 F. (2) 732 (C. C. A. 1); and *The Bronx*, 246 F. 809 (C. C. A. 2).

The Everosa, supra, was discussed by petitioners' main brief in this court (pp. 30, 31). As there stated, by the opinion of the appellate court, the effect of the supplier's contract was not investigated. The Circuit Court of Appeals, by express comment, declared that another point was decisive. The greatest support that respondent can derive from the decision is its reversal of the lower court in *The Everosa*, 18 F. Supp. 186 (D. C. R. I.) which was favorable to petitioner's contention.

The Bronx, supra, involves facts not even remotely comparable. It can be of interest only to the extent of the statement which respondent has quoted from the opinion:

> "The lien is presumed on proof of due delivery on request of lawful supplies, until such presumption is destroyed by affirmative proof of agreement that the promising party was to be exclusively liable for payment." *The Bronx*, 246 F. 809.

But at this stage of the litigation the burden of proof is of small moment. As said by the Ninth Circuit Court of Appeals: "In as much as all the facts are before the court, the question of the burden of proof is perhaps unimportant * * *". *North Coast Stevedoring Co.* v. *U. S.*, 17 F. (2) 874, 877 (C. C. A. 9).

This court and other admiralty courts have observed that the first section of the 1910 Act relieved the supplier of alleging and proving, in the first instance, that he relied on the credit of the vessel, thus giving the supplier the initial benefit of a prima facie presumption. The statute so provided to counteract the old presumption of the general maritime law that when a supplier dealt with the owner directly no lien was contemplated. *Morse D. D. & Repair Co.* v. *U. S.*, 1 F. (2) 233 (C. C. A. 2). This history and purpose are explained by Fitz-Henry Smith, Jr., one of the draftsmen of the statute, when his article says:

> "The first section also removes the presumption of credit to the owner in the case of contracts made by him, and simplifies the law by making the lien depend upon a contract by the furnisher with one in authority to bind the vessel for necessaries. * * * The last provision of the first section does not mean, however, that the lien shall exist *regardless* of the question of credit." *Harvard Law Review*, Vol. 24, pp. 189, 190.

But respondent did not merely fill an isolated order for oil. Respondent in supplying the petitioners' vessels, dealt with its buyer under an imposing long-term contract by which it provided for its own protection. To have inserted therein an express reservation of a lien might have deprived respondent of a prospective profitable customer. As stated by this court, respondent made a specific contract "instead of resting on the lien which the law would otherwise give" and "must rely on the contract it made for itself." *The President Arthur*, 279 U. S. 572. See also, *The Defiance*, 3 F. (2) 48, 51 (D. C. N. C.). Respondent's agreement with W. L. Comyn & Sons is fully exposed before this court. And to repeat the quotation from Fitz-Henry Smith, Jr., the statute does not mean "that the lien shall exist *regardless* of the question of credit." That question is to be determined objectively from the contract; for "the subjective intention of the (supplier), if contrary to the written memorial of the contract made by the parties, is immaterial." *The President Arthur*, 72 F. (2) 276, 279 (1934-C. C. A. 2).

About the formal document, respondent has tendered practically nothing in defense of petitioners' construction. As to the facts outside of that instrument, respondent's brief (p. 18) in substance merely says that its habit of typing the name of the vessel supplied upon its invoice for the price of oil was inconsistent with sole reliance upon the personal credit of its buyer. Perhaps. But such invoices were mailed only to W. L. Comyn & Sons (R. 101, 105, 113). Respondent's system of billing, in the absence of demands upon the vessel owners, tended merely to keep straight the numerous dealings with its buyer (R. 63; Ex. H). Respondent's correspondence treated all indebtedness as that of W. L. Comyn & Sons and contained no suggestion of demand upon the vessel owners (R. 64-99). In addition, respondent listed W. L. Comyn & Sons in its "sales register, and sales made to it were entered therein, under its name" (R. 34). Respondent's custom of designating each vessel in each invoice serves to emphasize all respondent's other practices and all provisions of the formal agreement which join in reflecting clearly respondent's exclusive reliance upon its buyer's individual credit.

A furnisher's method of billing or invoicing the price of necessaries has often been disregarded or outweighed by the courts in their denial of a maritime lien. For instance, in *The Kate*, 164 U. S. 458, 460, the supplier charged the coal to the charterer and to the vessels as well; in *The Valencia*, 165 U. S. 264, 265, the supplier charged the coal on its books to "S.S. Valencia and owners"; in *The Liberator*, 5 F. (2d) 585 (C. C. A. 4), the supplier "kept its account against each ship, its agents and owners"; and in *The Millinocket*, 266 F. 392, 393 (D. C. N. Y.), "the name of the vessel is typewritten first in the bills for the coal." These cases are sufficient to show that respondent's business habit of invoicing its buyer vessel by vessel, is a mere circumstance to be given proper, but not undue, consideration along with other facts. Here, it is the only off-key note in the entire song.

Since the problem of whether respondent's oil contract negatived the maritime liens asserted against the "Brand" and the "Stjerneborg" is largely of first impression in this court, petitioners repeat their contention that such contract operated to waive *in limine* respondent's right to a lien, which could arise only upon later actual delivery of oil to a vessel (46 U. S. C. A. 974). Distinguishing between the advance waiver of the right before the lien has arisen, and the subsequent waiver of the lien itself after it has accrued, an appellate court has recently said:

> "In considering the question of waiver, there is a wide difference between taking a security at the time the supplies are furnished to the vessel and taking one thereafter. In the first situation insistence upon a security may indicate that the credit of the vessel was not relied upon; and without such reliance no lien arises. W. A. Marshall & Co. v. The S.S. President Arthur, 279 U. S. 564, 73 L. Ed. 846. As that case shows, the facts are strictly construed to imply a 'waiver' of lien in the first situation." *In re Marine Transit Corporation*, 94 F. (2) 7 (C. C. A. 2).

Even in the Ninth Circuit Court of Appeals, which has been extreme in the allowance of the maritime lien for necessaries, the right to that remedy was denied because of a waiver *in limine* as a part of the supplier's original contract with the charterer. *The Astorian*, 57 F. (2) 85, 90 (C. C. A. 9).

Where a supplier, for a fixed term becomes legally obligated to sell fuel oil on the credit of its buyer for use of "any and all vessels owned, chartered and/or operated" later by the buyer, petitioners contend:

(1) That, in the absence of express provision to the contrary, fuel oil sold thereunder is delivered on the sole credit of the buyer;

(2) That since the supplier can not possibly know in advance whether the buyer's subsequent chartering or operating agreement will vest it with authority to bind the

vessels, the supplier has lost its power of choice and cannot be relying on the credit of the vessel;

(3) That, in the language of this court in the *Piedmont* case (254 U. S. 9), the pledge of the vessel's credit was not necessary to her receipt of fuel oil under the contract; and

(4) That the supplier has waived *in limine* his right to a future lien "by agreement or otherwise" (46 U. S. C. A. 974).

To this contention support has been extended by decisions denying a lien claimed by suppliers so obligated in similar general contracts.

The Cratheus, 263 F. 693 (C. C. A. 5);
The Rajola, 7 F. Supp. 618 (D. C. N. Y.);
The Ben Lawers, 42 F. (2) 897 (D. C. Wash.);
The Dictator, 18 F. (2) 131 (D. C. La.);
The Irages, 283 F. 445 (D. C. Fla.);
The Millinocket, 266 F. 392 (D. C. N. Y.).

In consequence, upon the oil contract point, respondent's claim of maritime lien fails.

CONCLUSION.

Petitioners renew the prayer of their main brief in this court.

Respectfully submitted,

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THE ARGUS PRESS SEATTLE

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THE ARGUS PRESS SEATTLE

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Supreme Court of the United States

OCTOBER TERM 1939

DAMPSKIBSSELSKABET DANNEBROG, a Corporation, Claimant of the Motorship "Stjerneborg," and
AKTIESELSKABET BORGESTAD, a Corporation, Claimant of the Motorship "Brand," *Petitioners*,

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a Corporation, *Respondent*.

No. 662

RESPONDENT'S BRIEF ON PETITION FOR CERTIORARI

NO GREATER REASON IS ADVANCED FOR GRANTING CERTIORARI IN THIS CASE THAN IN OTHER CASES IN WHICH THIS COURT HAS HERETOFORE DENIED CERTIORARI.

The Maritime Lien Act of June 5, 1920 (chap. 250, sec. 30, subsections P, Q, & R.—46 U. S. C. 971, 972 and 973) provides:

> "Sec. 971: Any person furnishing * * * supplies * * * to any vessel, whether foreign or domestic upon the order * * * of a person authorized by the owner, shall have a maritime lien on the vessel * * * and it shall not be necessary to allege or prove that credit was given to the vessel."

"Sec. 972: The following persons shall be presumed to have authority from the owner to procure * * * supplies: * * * any person to whom the management of the vessel at the port of supply is entrusted."

"Sec. 973: The officers and agents of a vessel specified in section 972 shall be taken to include such officers and agents when appointed by a charterer, * * * but nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor."

Respondent supplied fuel oil to the petitioners' vessels, "Stjerneborg" and "Brand," then under charter to W. L. Comyn & Sons. The charters obligated the charterer to pay for the fuel oil but did not in express terms forbid the charterer from incurring liens.

Following what we submit is a proper interpretation of the Maritime Lien Act as announced in its previous decisions in

The Portland, 273 Fed. 401;
The Golden Gate, 52 F. (2d) 397;
The Luddco 41, 66 F. (2d) 997;

the circuit court of appeals held that a maritime lien arose.

The rule followed by the circuit court of appeals in this case is that a charterer is one to whom the management of the vessel is entrusted, and that the statute gives a lien to one supplying a vessel upon

order of the charterer unless the charterer is expressly prohibited by the charter party from incurring liens on the vessel.

This is the intepretation put upon the statute by the circuit courts of appeal in the first, second, third and ninth circuits:[1]

The Everosa (C.C.A. 1) 93 F. (2d) 732;
The J. W. Hennessy (C.C.A. 2) 57 F. (2d) 77;[2]
The Anna E. Morse (C.C.A. 3) 286 Fed. 794;
The Golden Gate (C.C.A. 9) 52 F. (2d) 397.

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[1] There are other cases in the various circuits. The cases cited are typical.

[2] In the second circuit the eastern district of New York has, in several cases, denied the lien:
The Millinocket (1920, E.D.N.Y.) 266 Fed. 392;
The Thordis (1923, E.D.N.Y.) 290 Fed. 255;
The Pajala (1934, E.D.N.Y.) 7 Fed. Supp. 618.

District Judge Cooper in the *A. S. Sherman* (N.D. N.Y.) 51 F. (2d) 782, 786, however, recognized the circuit court of appeals of the second circuit as holding, with the ninth circuit, for the lien. The only circuit court of appeals cases in the circuit so hold:
The Penza (1925, C.C.A. 2) 9 F. (2d) 527;
The J. W. Hennessy (1932, C.C.A. 2) 57 F. (2d) 77.

The second circuit court of appeals must be regarded as upholding the right to a lien.

This court denied certiorari in two of the cases:

The Anna E. Morse, 286 Fed. 794—certiorari denied 1923, *United States v. Henderson*, 262 U. S. 759;

The Golden Gate, 52 F. (2d) 397—certiorari denied 1932, *Knutsen v. Associated Oil Co.*, 284 U. S. 682.

In 1920 this court decided *The South Coast*, 251 U. S. 519, holding that "by section 3 (46 U.S.C., sec. 972) a presumption is declared that a master appointed by a charterer has authority from the owner to procure" supplies. The charter there provided that the charterer should pay all charges and save the owner harmless from all liens with a provision for retaking the vessel if a lien were permitted to remain for thirty days. This court sustained the lien.

Two circuits have narrowly construed *The South Coast* to hold that no lien arises for supplies furnished a vessel under charter unless some provision in the charter party recognized that a lien might be incurred, as, in *The South Coast*, by requiring the charterer to remove liens within a specified period:

The Mona (C.C.A. 4) 282 Fed. 468;

The Cratheus (C.C.A. 5) 263 Fed. 693.[1]

This court also denied certiorari in *The Cratheus—Curaco Trading Co. v. Bjorge* (1920) 253 U. S. 492.

Petitioners advance no grounds disclosing greater reason for review now than may have existed in 1923 when this court denied certiorari in *The Anna E.*

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[1] But see *El Amigo*, 285 Fed. 868, in which the fifth circuit seems to have receded somewhat from the position taken in *The Cratheus*, 263 Fed. 693.

Morse, 262 U. S. 759, or in 1932 when certiorari was denied in *The Golden Gate*, 284 U. S. 682.

A vessel owner may secure his vessel free from liens created by one to whom it may be chartered by the simple expedient of inserting in the charter a provision that no liens may be created by the charterer.

United States v. Carver (1923) 260 U. S. 482.

This court should not be asked to review this judgment for the benefit of the New York Produce Exchange, which has apparently not revised its form of charter party since 1921, 3 Benedict on Admiralty (5th Ed.), p. 88, nor for the benefit of text writers nor compilers of legal forms who, without taking cognizance of the decisions, print this 1921 form as a model.

Poor on Charter Parties (2d Ed.) p. 223;
Cases on Admiralty, Lord & Sprague (2d ed.) p. 967;
8 Nichols Cyclopedia of Legal Forms, p. 439.

Respondent, whose furnishing of oil gave it a lien under the decisions in the jurisdiction where the charter party was executed (R. 114), the oil supplied (R. 101, 105, 113) and the vessels libelled, should not be subjected to the inevitable delay and expense of a review of the judgment in this case.

As the circuit court of appeals says (R. 226):

"The owners are not without a means of protection. 46 U.S.C.A., section 973."

The owner, by appropriate provision in the charter, may forbid the creation of liens. *United States v. Carver*, 260 U. S. 482.

THE CIRCUITS UNIFORMLY HOLD THAT THE EXISTENCE OF A STANDING CONTRACT TO SUPPLY DOES NOT NEGATIVE THE STATUTORY PRESUMPTION THAT THE SUPPLIER RELIED UPON THE CREDIT OF THE VESSEL.

All the circuits agree with the conclusion of the circuit court of appeals in this case that the existence of a standing contract between the charterer and supplier for the furnishing of oil does not negative the presumption created by 46 U.S.C. 971 that the supply was on the credit of the vessel.

An almost identical contract was involved in *The Everosa* (C.C.A. 1) 93 F. (2d) 732,[1] and in *The Golden Gate* (C.C.A. 9) 52 F. (2d) 397, in both of which the lien was sustained. There seem to be no other cases in which similar contracts were involved, except *The Millinocket*, 266 Fed. 392, in which a contract to supply (terms of contract not quoted) was held, *in connection with the testimony*, as indicating an intent to rely solely on the credit of the charterer.

The most favorable inference which can be drawn from the contract in respondent's behalf is that petitioner relied upon the credit of the charterer. It is well settled that the supplier may rely upon both the credit of the vessel and the one ordering the supply, be he owner or charterer. The cases are too numerous to cite.

Illustrative are:

The Everosa (C.C.A. 1) 93 F. (2d) 732;

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[1] For a fuller statement of the terms of the contract see the opinion of the district court, 18 F. Supp. 186 p. 190.

The J. W. Hennessy (C.C.A. 2) 57 F. (2d) 77;
The El Amigo (C.C.A. 5) 285 F. 868;
The Astorian (C.C.A. 9) 57 F. (2d) 85.
Piedmont Coal Co. v. Seaboard Fisheries Co., 254 U. S. 1, 10.[1]

The same rule prevailed prior to the enactment of the Maritime Lien Act:

The India (S.D.N.Y.) 14 Fed. 476;
Norwegian S. S. Co. v. Washington (C.C.A. 5) 57 Fed. 224;
The Alvira (N.D.Cal.) 63 Fed. 144.

THE DECISION IN THIS CASE IS NOT IN CONFLICT WITH ANY DECISION OF THIS COURT.

Respondent asserts probable conflict between *Piedmont Coal Co. v. Seaboard Fisheries Co.*, 254 U. S. 1, and the decision here that the existence of the contract to supply indicated no intent of libellant (petitioner) to rely solely on the credit of the charterer. Respondent contends that under certain statements made in that decision by Justice Brandeis no lien could arise unless a pledge of the vessel was *a sine qua non* to the obtaining of supplies.

We do not believe that Justice Brandeis' enumera-

[1] In this case (254 U. S. p. 5) there was a contract to supply coal. The lien was denied because the contract was not to supply vessels. This court said, however: "If the coal had been furnished to the several vessels by the libellant, maritime liens would have arisen and could have been established under the statute (46 U.S.C. 971-975) without proof that credit was given to the vessels" 254 U. S. p. 10).

tion (254 U. S. 2) of four bases of a maritime lien prior to the enactment of the Maritime Lien Act (46 U.S.C. 971-975) intended to require a supplier to prove that he would not have supplied had a pledge of the vessel's credit been unobtainable, as, for example, if the charter party forbade the creation of liens. Such a requirement would nullify the presumption given by sec. 971 that the credit of the vessel was relied upon.

In the *Piedmont* case the coal was supplied to the vessel owner for indiscriminate use and thereafter some appropriated to the vessels. As this court held that the supplier had not supplied the vessels, the court obviously meant to indicate only that there must be a vessel to be supplied as otherwise a pledge of a vessel's credit was unnecessary.

Respectfully submitted,

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No. 662

Supreme Court of the United States

OCTOBER TERM 1939

DAMPSKIBSSELSKABET DANNEBROG, a Corporation, Claimant of the Motorship "Stjerneborg," and AKTIESELSKABET BORGESTAD, a Corporation, Claimant of the Motorship "Brand," *Petitioners,*

vs.

SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a Corporation, *Respondent,*

UPON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT

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THE ARGUS PRESS, SEATTLE

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Supreme Court of the United States

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DAMPSKIBSSELSKABET DANNEBROG, a Corporation, Claimant of the Motorship "Stjerneborg," and AKTIESELSKABET BORGESTAD, a Corporation, Claimant of the Motorship "Brand," *Petitioners*, vs. SIGNAL OIL AND GAS COMPANY OF CALIFORNIA, a Corporation, *Respondent*,	No. 662

UPON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT

QUESTIONS PRESENTED

Petitioners urge two reasons for the reversal of the decrees herein. First, that respondent supplier, by entering into a contract with the charterer for the sale to it of fuel oil, waived its right to a lien on the vessels for the fuel supplied. Second, that, because the charters obligated the charterer to provide and pay for the fuel, no lien arose under the Maritime Lien Act of 1910, as amended in 1920, 46 U.S.C. Sec. 971-975.

If the provisions of the charters precluded a lien, then the question of whether the existence of the oil

contract waived the lien is immaterial. We therefore consider first whether the charters prohibited the charterer from incurring a lien against the vessels.

SUMMARY OF ARGUMENT

I.

The Provide-and-Pay-for Provision of the Charter Parties Did Not Withhold From the Charterer Authority to Bind the Vessels.

The oil was supplied upon order of the charterer. The charterer was authorized by the owner to order it. Under the Maritime Lien Act, a lien arose unless the provide-and-pay-for clause in the charter parties withheld from the charterer authority to bind the vessel. Such a provision alone does not withhold the authority. *The South Coast*, 251 U. S. 519. An express denial of authority is essential. *United States v. Carver*, 260 U. S. 482.

It is so held by the Circuit Courts of Appeal in the First, Second, Third, Seventh and Ninth Circuits in cases involving various types of charter parties and contracts. These decisions disclose a preponderance of judicial view that only explicit language denying power to bind the vessel will suffice to prevent the lien.

The decisions in *The Kate*, 164 U. S. 458, and *The Valencia*, 165 U. S. 264, relied on by petitioners, are distinguishable.

The Maritime Lien Act, 46 U.S.C. 971, gives a lien to any person furnishing supplies to a vessel upon the order of a person authorized by the owner, unless, because of the terms of the charter party, the person or-

dering the supply is without authority to bind the vessel therefor. The act, by expressly eliminating the necessity of allegation or proof that credit was given to the vessel, creates a presumption that the supply was furnished on the credit of the vessel.

II.

By Supplying the Oil Under a Standing Contract With the Charterer, Respondent Did Not Waive Its Lien.

The supplier may rely on the credit of both the charterer and the vessel. The lien is not waived unless the supplier relies solely on the charterer's credit, which respondent did not do. The oil contract did not exclude the application of the Maritime Lien Act. That act applied as a necessary incident of the contract. Decisions of the Circuit Courts of Appeal of the First and Ninth Circuits hold that such a contract does not preclude the lien.

ARGUMENT

I.

THE PROVIDE-AND-PAY-FOR PROVISION OF THE CHARTER PARTIES DID NOT WITHHOLD FROM THE CHARTERER AUTHORITY TO BIND THE VESSELS.

The charters here not only authorized the charterer to order the oil, they required the charterer to provide it (R. 116). The charterer ordered the oil. The oil was therefore ordered by one authorized by the owner to order it. The Maritime Lien Act creates the

presumption that it was supplied on the credit of the vessel. The only question, then, is whether the provision in the charters that the charterer should pay for the oil deprived the charterer of authority to bind the vessel therefor.

Since the enactment of the Maritime Lien Act in 1910, and its amendment in 1920, this court has considered but two cases bearing on this question: *The South Coast*, 251 U. S. 519, and *United States v. Carver*, 260 U. S. 482.

Prior to the enactment of the Maritime Lien Act, this court had decided two cases which, it is contended by petitioners, are controlling to the effect that an obligation to provide and pay for supplies deprives the charterer of authority to bind the vessel therefor. These cases are *The Kate*, 164 U. S. 458, and *The Valencia*, 165 U. S. 264.

We submit that this case is controlled by the decisions in *The South Coast*, and *United States v. Carver*, and not by *The Kate* and *The Valencia*.

The South Coast, 251 U. S. 519, concerned a charter wherein the charterer was to provide the crew and pay for all supplies. The master was to be, and was, appointed by the owner, but was under the orders of the charterer.

In the decision in the District Court, 233 Fed. 327, the court pointed out that the mere requirement that the charterers should provide and pay for supplies was not sufficient to deprive him of authority to bind the vessel, but that an express provision in the charter that the charterer was without such authority was essential, saying:

> "And while the owners took every precaution to warn the furnisher of the supplies not to have any of them go on the ship's account, they did not take the essential and fundamental precaution to provide by the terms of the charter that the charterer or the master appointed by him, should be without authority to bind the vessel therefor."

The decision of the District Court was affirmed by the Circuit Court of Appeals for the Ninth Circuit, *The South Coast* (C.C.A. 9, 1917) 247 Fed. 84. The Circuit Court of Appeals again stressed the fact that a mere requirement that the charterer provide and pay for supplies does not deprive him of authority to bind the vessel.

An analysis of the purposes of the Maritime Lien Act and the necessity that the owner expressly withhold from the charterer power to bind the vessel in order to defeat the lien granted by section one of the Maritime Lien Act (46 U.S.C. 971), is so well stated by the Circuit Court of Appeals in *The South Coast*, that we quote from the decision:

> "It is the purpose of the statute, as it was the purpose of the law previous thereto, that the furnisher of such commodities as are necessary to enable a ship to enter upon or pursue her voyage, and to engage in maritime traffic, to which only she is adapted, shall have a lien on the ship therefor. It is in the interest of shipping, conducted upon maritime waters, that such should be the case, as otherwise credit would not be extended, upon the account of the owner or master alone, to enable the ship to discharge its peculiar function, and great inconvenience would follow,

to the detriment and disadvantage, if not the ultimate disaster in large measure, of maritime shipping. Many ships sail under charter, either verbal or in form of regularly drawn charter parties, and it is usual and customary for the charterer in either event to disburse the necessary expenses of the ship; and of this all persons furnishing supplies, etc., to a chartered ship must be deemed to have notice. But notwithstanding this notice, or even knowledge that the ship is under charter, we cannot believe that it was the intendment of the statute or the law that the furnisher should, because of that fact, be deprived of his lien when advancing necessary repairs or supplies in good faith to enable the ship to engage in her accustomed traffic. Nor do we believe that it was the intendment of the statute or of the law thus to impose so vital a hindrance upon maritime shipping, and unless there is something more in the charter party, that unalterably inhibits the master or the charterer from incurring any expenditures on the credit of the ship that may become a lien thereon, the master's ordinary authority is not impaired or abbreviated; nor can the right of the furnisher of repairs, etc., to extend credit to the ship, and his consequent lien, be so subverted."

The judgment of the Circuit Court of Appeals was affirmed by this court in an opinion by Mr. Justice Holmes. *The South Coast*, 251 U. S. 519.

While the decision in *The South Coast* was based somewhat upon the fact that the charter provided that the charterer would save the owner harmless from all liens and expenses that it might be put to in consequence of liens, and that the charterer was to

discharge, within thirty days, any debts which would create a lien upon the vessel, it is to be noted that Mr. Justice Holmes stated:

> "There was nothing from which the furnisher could have ascertained that the master did not have power to bind the ship."

The furnisher could have ascertained that it was the obligation of the charterer to provide and pay for the supplies and that the master was under the orders of the charterer and not the owner, for the charter party so provided. Had this court, in deciding *The South Coast*, considered that the obligation to provide and pay for the supplies withheld from the charterer's master authority to bind the vessel, the court surely would not have stated that: "There was nothing from which the furnisher could have ascertained that the master did not have power to bind the ship," but would have expressed its disagreement with the statements of the district court and the circuit court of appeals that an express withdrawal of the authority was essential.

The First, Second, Third, Seventh and Ninth Circuit Courts of Appeal hold that a charterer, conditional vendee, or managing agent required by a charter party or contract to procure and pay for supplies, repairs, etc., is not, by such requirement alone, deprived of authority to bind the vessel.

First Circuit: *The Everosa* (1937) 93 F. (2d) 732:

> Time charter provision: "That the charterer shall provide and pay for all coals." 18 F. Supp. 186, p. 189—no provision prohibiting charterer from incurring lien.

Second Circuit: *The J. W. Hennessy* (1932) 57 F. (2d) 77:

> Demise charter provision: Charterer " 'at its own expense' to 'operate, man, furnish all the fuel, supplies, labor, and all costs necessary to operate the same.' There was no clause in the charter that the charterer had no right or authority to pledge the credit of the vessels or to impose any liens upon them." 57 F. (2d) 77.
>
> The court said: "Here, as in the *South Coast*, the charter party, while providing that the charterer should pay for all expenses, did not exclude the power of the charterer to bind the vessel."
>
> "In the absence of a clause doing this (excluding charterer's right to create a lien), the Dalzell company was given a presumptive lien for towage."

Third Circuit: *The Anna E. Morse* (1922) 286 Fed. 794, cert. den. 262 U. S. 759:

> Contract provision: " 'the agent' agreed to provide and pay for all provisions, equipment and supplies." 286 Fed. 798.
>
> The court said: "In searching this contract for lack of authority on the part of the Transport Company to procure supplies on the credit of ships assigned to it, the libelants would have found no provision whereby the United States, as owner, had withheld authority from the Transport Company to procure supplies for the ships it had intrusted to its management."

Seventh Circuit: In *Munson Inland Water Lines v. Seidl* (1934) 71 F. (2d) 791, the Seventh Circuit considered a conditional sales contract which required the purchasers to keep the vessels free and clear of liens. The court found the contract to be

unlike that in either *The South Coast* or *United States v. Carver*, and reached this conclusion:

> "We are convinced that an agreement, to exclude liability for liens created by the master, must be so worded as to necessitate the construction that a lien may not be created. In short, the agreement must *expressly deny* to the vendee authority to create a lien." (Emphasis by the court.) 71 F. (2d) p. 793.

Ninth Circuit: *The Golden Gate*, 52 F. (2d) 397, cert. den. 284 U. S. 682.

> Time charter provision: "In the instant case the charter party contains a provision requiring the charterer to provide and pay for all fuel oil, but contains no express provision denying the right of the charterer to bind the ship for supplies."
>
> The court said: "In view of the fact that in the instant case the charter did not prohibit the charterer from creating liens, it is immaterial whether or not the libelant knew or should have known its terms."

Only one Circuit Court of Appeals has held that the provide-and-pay-for provision standing alone deprives the charterer of authority to bind the vessel, the Circuit Court of Appeals for the Fifth Circuit, *The Cratheus* (1920) 263 Fed. 693. It is to be noted, however, that in *The Cratheus* there was no claim that under the law as it was before the enactment of the Maritime Lien Act a lien would have arisen, the court saying:

> "It is not claimed that under the law as it was before the enactment of the Act of June 23, 1910, 'relating to liens on vessels for repairs, supplies, or other necessaries' (36 Stat. 604 [Comp. St.

Sec. 7783-7787]), the coal was so furnished as to give a lien on the vessel."

As pointed out by the Circuit Court of Appeals for the Ninth Circuit, in *The Golden Gate*, 52 F. (2d) 397, the charterer was, however, prior to the enactment of the Maritime Lien Act, authorized to create liens on a chartered vessel because he is a person to whom the management of the vessel at the port of supply is intrusted.

In *The Golden Gate* the court said:

> "* * * By the provisions of 46 U.S.C.A., sections 972, 973, *supra*, the charterer is authorized to create liens on the chartered vessel for necessary supplies furnished it, because it is a 'person to whom the management of the vessel at the port of supply is intrusted.' This was the rule before the above-mentioned statute was enacted, and the courts have since recognized this power of the charterer. *The India* (D. C.) 14 F. 476, 478; *The Lime Rock* (D.C.) 49 F. 383, 384; *The George Dumois* (C.C.A.) 68 F. 926, 929; *The George Farwell* (C.C.A.) 103 F. 882; *The City of Milford* (D.C.) 199 F. 956; *Thomas W. Rogers* (C.C.A.) 207 F. 69; *The Yankee* (C.C.A.) 233 F. 919; *The Oceana* (C.C.A.) 244 F. 80, 83; *The Penn* (C.C.A.) 276 F. 118."

The cases cited support the statement. They concerned: a voyage charter, *The India* (D.C.S.D.N.Y., 1882) 14 Fed. 476; time charter, *The George Demois* (C.C.A. 5, 1895) 68 Fed. 926, and *The George Farwell* (C.C.A. 2, 1900) 103 Fed. 882; an agreed purchaser, *The City of Milford* (D.C.Md. 1912) 199 Fed. 956; and a bailee for hire whom the court considered

as an owner *pro hac vice*, *The Lime Rock* (D.C.N.J. 1892) 49 Fed. 383.

The Fourth Circuit case of *The Mona*, 282 Fed. 468, has been cited as holding that a simple provision that the charterer provide and pay for withholds authority to bind the ship (66 F. (2d) 997, 998). The case concerned the question whether towage was, prior to the amendment of the Maritime Lien Act in 1920, a necessary. The question of the effect of a charter provision requiring charterer to provide and pay for was not discussed by the court. The court held that: "The manner of business between the libelant and the Caravel Steamship Company (charterer) shows that it was never intended that this bill was to be asserted against the bark."

There has been considerable confusion in the district courts as to whether a provide-and-pay-for clause withholds power to incur the lien. No one case nor text writer or law journal lists all the cases or details the particular facts of each. *The Luddco 41* (C.C.A. 9) 66 F. (2d) 997, lists parts of the cases. The Second Circuit case, *The J. W. Hennessy*, 57 (2d) 77, refers to many of them.

Many of the district court opinions refer only to one line of cases, as for example *The Ben Lawers* (D.C. W.D. Wash.) 42 F. (2d) 897, opinion by the Idaho district judge, in which the court apparently took no notice of the decision of the Circuit Court of Appeals in *The Portland*, 273 Fed. 701. The decision is in any event overruled by *The Golden Gate*, 52 F. (2d) 397, and *The Luddco 41*, 66 F. (2d) 997.

In *The Pajala*, 7 F. Supp. 618, the Eastern District

of New York was manifestly uncertain but thought that *The Thordis*, 290 Fed. 255, which denied a lien, and *The J. W. Hennessy* (C.C.A. 2) 57 F. (2d) 77, which sustained one, were distinguishable on the ground that the one concerned a time charter and the other a demise charter although in *The J. W. Hennessy* the court referred to *The Golden Gate*, a time charter case, as in line with its decision. *The Pajala* has the further element that the charterer took on enough bunkers "to have on board on redelivery a profitable allowance" as provided in the charter.

44 Yale Law Journal 697, at page 700, gives a partial list of the cases, and concludes:

> "* * * it would seem desirable that the Supreme Court recognize the existence of this conflict of authority and interpret ambiguous provisions of this sort as permitting the imposition of a lien."

The cases in the Circuit Courts of Appeal are not controlling on this court. They do, however, disclose the overwhelming view of the Circuit Courts of Appeal that a simple provide-and-pay-for provision does not deprive the charterer of power to bind the vessel.

As stated in the decision of the Circuit Court of Appeals in these cases:

> "The owners are not without a means of protection. 46 U.S.C.A. section 973." (R 226)

Petitioners, as did owners in *United States v Carver*, 260 U. S. 482, could easily have prevented the attachment of liens by the simple expedient of inserting in the charters a provision that the charterer might not incur liens.

As stated by Professor Robinson in his recent Hornbook—Robinson on Admiralty, p. 394:

> "Only explicit language denying the power, therefore, will serve."

See also the author's note, p. 635, as to custom of owners to protect vessels against liens.

As five Circuit Courts of Appeal have held that a provide-and-pay-for clause does not withhold the charterer's authority to incur a lien as against one holding that it does, the clause cannot be said to clearly withhold the authority. It may be, as stated in 44 Yale Law Journal, 697, 700 *ante* p. 12, that the charter provisions are ambiguous. If so, they should be interpreted by this court most strongly against the owners who could have removed any question by using explicit language denying the power, as in *United States v. Carver*, 260 U. S. 482.

It is contended by petitioners, however, that this court, in its decisions in *The Kate* (1896) 164 U. S. 458, and *The Valencia* (1897) 165 U. S. 264, decided prior to the enactment of the Maritime Lien Act, held that the simple provision in the charter that the charterer should provide and pay for supplies deprived the charterer of the power to bind the vessel therefor and that those decisions require a reversal.

This court has not interpreted its decision in *The Kate* and *The Valencia*. The decisions have been interpreted, however, by the Circuit Court of Appeals for the Ninth Circuit, in *The South Coast*, 247 Fed. 84, and by the Circuit Court of Appeals for the Second Circuit, in *The J. W. Hennessy*, 57 F. (2d) 77,

both courts sustaining liens although the charterer was obligated to provide and pay for supplies.

In *The South Coast*, 247 Fed. 84, the Circuit Court of Appeals for the Ninth Circuit said:

> "*The Kate* and *The Valencia* related to supplies furnished upon the order of a charterer and prior to the passage of the Merchant Marine Act. We think that act as construed in *The South Coast* precluded the application of these decisions to the case at bar and subjected the claimant's vessels to a lien for towage because the charter party did not exclude the charterer's power."

In *The J. W. Hennessy*, 57 F. (2d) 77, the Circuit Court of Appeals for the Second Circuit said:

> "In *The Ka* [illegible] coal, for the price of which the lien was filed, was furnished to the charterer under circumstances indicating, as was said in the *Surprise*, 'that there was never any expectation of holding the vessel' * * *
>
> "The case practically hinged upon the condition that there was an element of fraud in the transaction of claiming the lien, to which the libelant was a party. *The Valencia* is an analogous case."

That *The Kate* did practically hinge upon the element of fraud is disclosed by the fact that Mr. Justice Harlan, who wrote the opinions in both cases, emphasized the statement in *The Kate* that:

> "The principle would seem to be firmly established that when it is sought to create a lien upon a vessel for supplies furnished upon the order of the master, the libel will be dismissed if it satisfactorily appears that the libelant knew, or ought reasonably to be charged with knowledge, that

there was no necessity for obtaining the supplies, or, if they were ordered on the credit of the vessel, that the master had, at the time, in his hands, funds which his duty required that he should apply in the purchase of needed supplies."

We submit that these interpretations of the decisions in *The Kate* and *The Valencia* are correct. In *The Kate* this court stated that the coal was not required in the interests of the owners at the time it was furnished, for the agent of each vessel had sufficient funds in hand or could have obtained them upon the credit of the vessel, to supply the coal for any given voyage. It reached the conclusion that the attempt to hold the vessel liable was in bad faith to the owner. The cases cited by the court are all cases where it appeared that the master had sufficient funds on hand to pay for the necessities.

The Valencia, as stated by the Circuit Court of Appeals for the Second Circuit in *The J. W. Hennessy*, 57 F. (2d) 77, was an analogous case. This court in *The Valencia* expressly reserved the question of whether a charterer obligated to provide and pay for necessary supplies was without authority to bind the vessel, saying:

> "Under what circumstances, if under any, a charterer who has control and possession of a vessel under a charter party requiring him, at his own cost, to provide for necessary supplies and repairs, may pledge the credit of the vessel, it is not necessary to determine."

It must also be remembered that *The Kate* and *The Valencia* were decided prior to the Maritime Lien Act when proof was necessary that the supply was on the

credit of the vessel. The decisions in both cases, particularly *The Valencia*, were influenced by that factor for, states Mr. Justice Harlan in *The Valencia*, 165 U. S. 265, 266:

> "No fact proved in the case warranted the inference that either the master or the charterer agreed to pledge the credit of the vessel."

If a simple charter provision that the charterer provide and pay for deprived the charterer of authority to pledge the credit of the vessel, then any agreement to pledge it would be ineffective. By specifically noting the absence of any such agreement, it is evident this court in *The Valencia* did not consider that a provide-and-pay-for clause alone deprived the charterer of authority to bind the vessel.

II.

BY SUPPLYING THE OIL UNDER A STANDING CONTRACT WITH THE CHARTERER, RESPONDENT DID NOT WAIVE ITS LIEN.

It is well settled that the supplier may rely on the credit of both the orderer of the supply and on the credit of the vessel. *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U. S. 1. In that case there was a contract for future supply: "the Piedmont & George's Creek Coal Company * * * agreed to furnish the Oil Corporation such coal as it would require during the season of 1914." The decision in the case was that no lien arose because the coal

was not supplied to the vessels. The fact that the oil was supplied under a standing contract would not have defeated the liens for, said the court:

> "The difficulty which confronts the Coal Company does not lie in the fact that the contract for the coal was made with the Oil Corporation.
>
> * * * * * * *
>
> "Likewise, the fact that the coal which was supplied to the several vessels had been purchased under a single contract presents no difficulty."
>
> * * * * * * *
>
> "If the coal had been furnished to the several vessels by the libelant, maritime liens would have arisen and could have been established under the statute without proof that credit was given to the vessels."

If the supply is furnished on a cash basis there is no debt and consequently no lien. A lien arises only when there is a purchase on credit. The vessel itself can not be a buyer. Supplies can be bought only by persons.

No supplier expects when supplying a vessel that he will have to foreclose his lien. Unless the supply is for cash, the supplier is, in the first instance, relying on the person ordering the supplies. The facts that the oil here was bought by the charterer and under a contract which allowed certain time for payment, and that further deliveries might be refused if he did not pay, do not negative the presumption created by the statute that the supply was on the credit of the vessel.

The lien is not waived by reliance on the credit of the one ordering the supply, but only when it appears

that the orderer was to be exclusively liable for payment.

In *The Bronx* (C.C.A. 2, 1917) 246 Fed. 809, the rule is stated to be:

> "The lien is presumed on proof of due delivery on request of lawful supplies, until such presumption is destroyed by affirmative proof of agreement that the promising party was to be exclusively liable for payment."

There is nothing in the contract here to the effect that the promising party was to be exclusively liable for payment.

That respondent was not waiving the lien is established by the following facts and circumstances:

Respondent treated each delivery as a separate transactions. It did not carry the items as a running account (R. 71, 76, 81). The receipts were made out to the vessel and owners (R. 101, 104, 111). Bills and invoices were to the vessel and owners (R. 101, 105, 113). No action was taken on the charterer's offer to assign its collect freights to secure the price of the oil (R. 76) (Record does not disclose anything done on the offer).

All of these acts by respondent would have been inconsistent had respondent been looking only to the credit of the charterer. Furthermore the charterer considered that the accounts were against the vessels (R. 67) "We are now in receipt of your account against the 'Hoegh Trader' * * *."

It is immaterial that respondent knew that the Stjerneborg was under time charter (R. 94), or as far as the record discloses, had no knowledge of any

agreement on the Brand prior to the time the oil was on board, except as disclosed by Comyn's (the charterer's) letter ordering the supply, that "Messrs. Swayne & Hoyt, Ltd., will be acting as agents and if you will keep in touch with them they will be able to advise as to the time and place they will require the oil barge to be put alongside" (R. 102).

The master of the Stjerneborg did not endorse the delivery tickets "For time charterer's account" (R. 111). The chief engineer of the Brand did (R. 100, 104). These circumstances served only to notify respondent, in the one case before, and in the other case after, the oil was in the bunkers, that the vessels were under a time charter of the same kind as had been theretofore held by the Circuit Court of Appeals which covers the entire Pacific Coast, did not withhold the charterer's authority to bind the vessel.

The Portland (C.C.A. 9, 1921) 273 Fed. 401;

The Golden Gate (C.C.A. 9, 1931) 52 F. (2d) 397;

The Luddco 41 (C.C.A. 9, 1933) 66 F. (2d) 997.

Petitioners argue at length that the oil contract excluded the application of the Maritime Lien Act because the contract stated that it contained the entire contract and that it should be governed by the laws of the state of California.

The fact that the contract may have recited all that the contracting parties agreed upon does not exclude the application of legal rights and liabilities which inure in the contract. The contract as a matter of fact was silent on many matters. It contained no

provision as to how or where orders should be placed, no requirement that the deliveries should be receipted for, no provision as to manner of billing, no provision that respondent supplier might sue the charterer for non-payment.

As the contract did not specifically give respondent a right to sue the charterer nor specifically say that the oil was furnished on the credit of the vessel, it would be as logical to claim that respondent could not sue the charterer, as to claim that respondent did not rely on the credit of the vessel. The claim is manifestly untenable. The right to sue the charterer *in personam* would rise because the law gives such rights. Reliance on the credit of the vessel is presumed under the Maritime Lien Act, 46 U.S.C. 971. There was no necessity of reciting in the contract either the legal right or the statutory presumption.

Other details of dealings which might arise under the contract, such as method of ordering, billing, were left open and subsequently arranged by letter or business custom, so the contract did not cover or purport to cover every detail of the transaction.

The provision that the contract was to be governed by the laws of California does not exclude the application of the federal Maritime Lien Act for the very obvious reasons that "The legislation of Congress is a portion of the law of each state, identical in each," Restatement: Conflict of Laws, Chap. 1, sec. 2, p. 5; that the laws of the United States are the supreme law of the land, United States Constitution, Art. VI; and that the Maritime Lien Act superseded (46

U.S.C. 975) the California law of maritime liens, thus becoming the California law.

This case is not like *The President Arthur*, 279 U. S. 564, where the supplier had contracted that the owner should pay for the coal by trade acceptances at the time of delivery. To have held that a lien arose under such a circumstance would have been to permit an implied provision that the supply was on the credit of the vessel to override the express provision of the agreement that it was to be "paid for" by the acceptances. As the owner was, in this court's own language, to "pay for" the coal by trade acceptances, the coal was paid for when the acceptances were given. When paid for, the debt was extinguished and there was no basis for a lien.

Petitioners make much of the statement of this court in *Piedmont & George's Creek Coal Co. v. Seaboard Fisheries Co.*, 254 U. S. 1, that a maritime lien could arise only if a pledge of the ship's credit was necessary.

This court in that case was considering whether supplying for use in both factories and vessels to an owner, who later appropriated a portion of the coal to certain vessels, was supplying to the vessels, holding that it was not. The statement must be interpreted in the light of the problem before the court. The coal was not supplied for vessels. It was supplied for the buyer's general use in factories and vessels. What this court undoubtedly meant was that in such a case there could have been no credit extended the vessel because the vessel was not primarily involved. This court certainly did not mean that no lien arises un-

less the supplier proves that, but for the credit of the vessel, he would not have supplied. Such a holding would destroy the presumption of the Maritime Lien Law that the supply was on the credit of the vessel.

Contracts similar to the one in this case were involved in *The Portland* (C.C.A. 9) 273 Fed. 401, and *The Golden Gate*, 52 F. (2d) 397, but were not particularly discussed by the court, although in *The Portland* the court stated that appellant put special stress upon the fact that there was a general contract between libelant and the charterer.

In *The Everosa* (C.C.A. 1) 93 F. (2d) 732, there was an almost identical contract, which the District Court held (18 F. Supp. 186, 190) negatived a sale on the credit of the vessel because it contained no provision for a lien on the vessel. The District Court decision was reversed by the Circuit Court of Appeals without mention of the contract.

Undoubtedly neither Circuit Court of Appeals considered, in view of the presumption under the Maritime Lien Act, that a general contract to supply overcame the presumption—relying on the credit of the orderer not being inconsistent with reliance on the credit of the vessel as well.

The Eastern Shore (D.C.Md.) 24 F. (2d) 443;
The A. S. Sherman (D.C.N.D.N.Y.) 51 F. (2d) 782;
The Astorian (C.C.A. 9) 57 F. (2d) 85;
The El Amigo (C.C.A. 5) 285 Fed. 868;
The Henry S. (D.C.E.D. Va.) 4 F. Supp. 953;

and cases herein cited.

CONCLUSION

Respondent therefore respectfully submits that the charter parties in these cases did not withhold from the charterer authority to bind the vessels, that maritime liens arose, that they were not waived by the standing contract, and that the decree of the Circuit Court of Appeals and the decrees of the District Court be affirmed with interest and costs as therein decreed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 662.—October Term, 1939.

Dampskibsselskabet Dannebrog, Claimant of the Motorship "Stjerneborg", et al., Petitioners, *vs.* Signal Oil and Gas Company of California.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 20, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The question is whether the respondent is entitled to maritime liens for fuel oil delivered to petitioners' vessels.

In September, 1932, respondent, Signal Oil and Gas Company, made a contract with the Anglo Canadian Shipping Company, Limited, agreeing to sell fuel oil to any vessel which the Anglo Canadian Company might own, charter or operate. In May, 1933, the parties modified the contract so as to include the fuel oil requirements of vessels owned, chartered or operated by W. L. Comyn & Sons. Later, the respective owners of the two vessels here in question, the "Stjerneborg" and the "Brand", chartered them to W. L. Comyn & Sons.

The charters were time charters on the so-called "Government form". The owners agreed "to let" and the charterers "to hire" the vessel "from the time of delivery" for a specified period, the vessel to be placed "at the disposal of the charterers" at such place as the charterers may direct, being on her delivery ready to receive cargo and to be employed in carrying merchandise as stated. The owners agreed to provide and pay for all provisions, wages and shipping and discharging fees of the captain, officers, engineers, firemen and crew; to pay for the insurance of the vessel, and to maintain her in a thoroughly efficient state in hull, machinery and equipment. The charterers agreed to "provide and pay for" coals and fuel oil, port charges, pilotages, etc., and all other usual expenses except as before stated. The charterers were to pay "for the

use and hire" of the vessel a stipulated amount commencing "on and from the day of her delivery" and to continue until "the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the owners (unless lost) at a safe port" as designated. It was provided that the captain, although appointed by the owners, should be "under the orders and direction of the charterers as regards employment or agency"; and the charterers were to load, stow and trim the cargo at their expense under the supervision of the captain. If the charterers should have reason to be dissatisfied with the conduct of the captain, officers or engineers, the owners if necessary should make a change in the appointments. The charterers were allowed to appoint a supercargo to accompany the vessel and "see that voyages are prosecuted with the utmost despatch". It was further provided that nothing in the charter should be construed as a "demise" and that the owners were to remain responsible for the navigation of the vessel. The charters contained no prohibition against the creation of liens for necessary supplies ordered by the charterers.

Respondent libeled the vessels for fuel oil supplied to the vessels respectively on the charterers' order, and the owners appeared and filed answers alleging that the oil was furnished upon the charterers' credit and not upon that of the vessel.

The District Court sustained the liens (25 Fed. Supp. 594) and the Circuit Court of Appeals affirmed the decrees. 106 F. (2d) 896. Because of an alleged conflict with decisions of the Circuit Court of Appeals of the Fifth Circuit in *The Cratheus*, 263 Fed. 693, and *Pensacola Steamship Company* v. *United States Shipping Board*, 277 Fed. 889, certiorari was granted. February 26, 1940.

The Circuit Court of Appeals in the instant case followed its decisions in *The Portland*, 273 Fed. 401, and *The Golden Gate*, 52 F. (2d) 397. *The Golden Gate* was a case of a time charter which required the charterer to provide and pay for fuel oil but contained no provision denying the right of the charterer to bind the ship for necessary supplies. The court said that in the absence of such a prohibition the ship was bound whether the supplies were ordered by the charterer or by the master. The ruling was reiterated by the same court in *The Ludden*, 66 F. (2d) 997, 998. In further support of its position, respondent cites the following cases from other circuits: *The Everosa*, C. C. A. 1st, 93 F. (2d) 732, 735;

The J. W. Hennessy, C. C. A. 2d, 57 F. (2d) 77, 79, 80; *The Annie E. Morse*, C. C. A. 3d, 286 Fed. 794, 798; *Munson Inland Water Lines* v. *Seidl*, C. C. A. 7th, 71 F. (2d) 791, 793.

Petitioners rely upon our decisions in *The Kate*, 164 U. S. 464, and *The Valencia*, 165 U. S. 264, to the effect that where the charter party requires the charterer to provide and pay for supplies, the supplier being charged with knowledge of the provisions of the charter party was not entitled to a maritime lien for supplies furnished to the vessel upon the order of the charterer.

These decisions, however, were prior to the passage of the Act of June 23, 1910, 36 Stat. 604, which governs the present case. The text of the Act, as amended, is set forth in the margin.[1] Its purpose was to simplify and clarify the rules as to maritime liens as to which there had been much confusion. The Act did away with the artificial distinction between repairs, supplies, etc., furnished in home ports and those furnished in foreign ports. It did away with the doctrine that when the owner of a vessel contracted in person for necessaries or was present in the port when they were ordered, it was presumed that the material man did not intend to rely upon the vessel's credit. It substituted a federal statute for numerous state

[1] The Act of June 23, 1910, 36 Stat. 604, as amended by the Act of June 5, 1920, § 30, 41 Stat. 1005, 46 U. S. C. 971-973, provides:

"§971. *Persons entitled to lien.* Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

"§ 972. *Persons authorized to procure repairs, supplies, and necessaries.* The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

"§ 973. *Notice to person furnishing repairs, supplies, and necessaries.* The officers and agents of a vessel specified in section 972, shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this chapter shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor".

Other provisions, §§ 974 and 975, relate to the waiver of liens and the superseding of state laws.

statutes purporting to confer liens. *Piedmont Coal Company* v. *Seaboard Fisheries Company*, 254 U. S. 1, 11.[2]

In so doing, the statute provided a series of simple and comprehensive rules. While it was said not to be intended to change the general principles of the law of maritime liens,[3] it was intended to operate in aid of those who supply necessaries to ships and it correspondingly restricted the rights of the owners of the vessels. Any person furnishing repairs, supplies, etc., to a vessel whether foreign or domestic, "upon the order of the owner" or "of a person authorized by the owner", is to have a maritime lien which may be enforced by suit *in rem*. It is not necessary to allege or prove that credit was given to the vessel. The "managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted", is presumed to have authority to procure the necessaries. The officers and agents thus specified include those appointed "by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel". These broad provisions are then subjected to the qualification that nothing in the Act should be construed to confer a lien "when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor".

Despite the aim thus to provide simple and clear rules, there has been no little contrariety of opinion in the application of the statute,—well illustrated by the conflicting decisions to which we have referred with respect to the existence of maritime liens where supplies have been ordered by a charterer who has agreed with the owner to provide and pay for them. As, in such a case, the supplies are furnished on the charterer's order, there is no question that the supplier is charged with knowledge of the provisions of the charter when he either knows them or by reasonable diligence could have ascertained them. So far the principle of *The Kate* and *The Valencia*, *supra*, is embodied in the statute. But it does not fol-

[2] See, also, The Yankee, 233 Fed. 919, 924; The Oceana, 244 Fed. 80, 82; Senate Report, No. 831, 61st Cong., 2d sess.; House Report, No. 772, 61st Cong., 2d sess.

[3] Senate Report, No. 831, 61st Cong., 1st sess. Marshall & Co. v. "President Arthur", 279 U. S. 564, 568.

lo[illegible] that, in the light of the statute, *The Kate* and *The Valencia* can st[illegible] be regarded as authority for the view that the mere fact that the charterer is bound to provide and pay for the supplies excludes the supplier from having a maritime lien when the charter party contains no prohibition against its creation.

We think that our decision in *The South Coast*, 251 U. S. 519,[4] negatives such a conclusion. That was a case of a bare-boat charter which provided that the charterer should pay for all supplies and all other charges and save the owner harmless from all liens. The supplies were ordered by the master, but, though appointed by the owner, the master was under the orders of the charterer and thus the master's orders were the charterer's orders. When the supplies were ordered, representatives of the owner at the port of supply warned the supplier that the vessel was under charter and that he must not furnish the supplies on the credit of the vessel. If the owner had power to prevent the attaching of a lien by this warning, the owner had done so. But while under the terms of the charter party if was clearly the duty of the charterer to provide and pay for the supplies and to save the owner harmless, this was held not to preclude the creation of a maritime lien. *The Kate* and *The Valencia* were cited unavailingly. When the charter party was examined to see if it prohibited liens it was found that it did not do so; it recognized the possibility of liens. It provided that the owner might retake the vessel in case of the failure of the charterer to discharge within thirty days any debt which was a lien upon it and also for a surrender of the vessel free of liens upon the charterer's failure to make certain payments.

We think that the fair import of our decision in *The South Coast* is that when the charterer has the direction and control of the vessel and it is his business to provide necessary supplies, and the charter party does not prohibit the creation of a maritime lien therefor, the material-man is entitled to furnish the supplies upon the credit of the vessel as well as upon that of the charterer and the lien is not defeated by the fact that the charterer has promised the owner to pay.

When, however, the charter party, with knowledge of which the material-man is charged, prohibits the creation of a lien for sup-

[4] The facts are more fully set forth in the opinion of the Circuit Court of Appeals. The South Coast, 247 Fed. 84.

plies ordered by the charterer or the charterer's representative, no lien will attach. This was decided in *United States* v. *Carver*, 260 U. S. 482. That was a case of vessels owned by the United States. The charterer, whose representative had ordered the supplies, had agreed that it would "not suffer nor permit any lien" which might have priority over the title and interest of the owner. The question was whether a maritime lien would have arisen against the vessels if they had been privately owned. The court, quoting the provision of the Act of 1910 as to the duty of the material-man to make inquiry, said that he was not entitled "to rest upon presumptions until he is put upon inquiry"; he must inquire. "If by investigation with reasonable diligence the material-man could have found out that the vessel was under charter, he was chargeable with notice that there was a charter; if in the same way he could have found out its terms he was chargeable with notice of its terms". The court added that there would have been no difficulty in finding out both. The court found a difference between the language of the charter party in the *Carver* case and that used in *The South Coast*. In the *Carver* case "the primary undertaking" was that "a lien shall not be imposed". The lien was denied, not because the charterer was bound to provide and pay for supplies but because the charter party prohibited the lien. To the same effect is the decision in the case of the *St. John's*. *Colonial Beach Company* v. *Quemahoning Coal Company*, 260 U. S. 707.

As, in the instant case, the charter parties contained no provision prohibiting the creation of a maritime lien, we are of the opinion that the mere fact that they required the charterers to provide and pay for the supplies did not prevent the liens from attaching.

The argument is pressed that respondent was under a general contract to supply "the fuel oil requirements of any and all vessels owned, chartered, or operated" by W. L. Comyn & Sons. But this contract did not provide that the oil should be supplied on the sole credit of Comyn as the owner or charterer of the vessels or negative the creation of maritime liens for supplies actually furnished to the vessels in satisfying their requirements. The decisions which petitioner cites are not apposite. In *Piedmont Coal Company* v. *Seaboard Fisheries Company, supra*, the Coal Company had made a contract with a corporation, which owned both steamers and factories, to furnish such coal as should be required. The court ob-

served that the difficulty which confronted the Coal Company in seeking to enforce a maritime lien did not lie in the fact that a contract had been made for the supply of coal. "A vessel", said the court, "may be liable *in rem* for supplies, although the owner can be made liable therefor *in personam:* since the dealer may rely upon the credit of both". So, the court recognized that if in that case "the coal had been furnished to the several vessels by the libellant, maritime liens would have arisen and could have been established under the statute without proof that credit was given to the vessels". The difficulty which blocked recovery by the Coal Company was "solely that it did not furnish coal to the vessels". There "was no understanding when the contract was made, or when the coal was delivered by the libellant, that any part of it was for any particular vessel or even for the vessels then composing the fleet. And it was clearly understood that the purchasing corporation would apply part of the coal to a non-maritime use". *Id.*, pp. 10, 11, 13. In the instant case, the oil was supplied exclusively for the vessels in question, was delivered directly to the vessels and was so invoiced; and there was nothing in the general contract to the effect that the supplies were to be furnished upon the exclusive credit of W. L. Conyn & Sons and not also upon the credit of the vessels.

In the other case relied upon, *Marshall & Company* v. *"President Arthur"*, 279 U. S. 564, the point was that the maritime lien had been waived by the libellant under an agreement by which trade acceptances, endorsed by designated persons had been received; that "by taking other and different security, upon which it relied, and which it still retains, without stipulating for the retention of the lien, it has waived the lien which it otherwise would have had". *Id.*, p. 572. It may be noted that in the instant case there was a contention that the liens had been waived by the respondent by entering into a certain creditor's agreement and by accepting certain security. But it appeared that in those transactions the right to the liens on the vessels had been expressly reserved. The court below accordingly ruled that there had been no waiver and its decision in that relation has not been challenged here.

There remains the contention that, apart from any prohibition of the creation of liens, the vessels could not be bound for supplies ordered by the charterers because of the nature of the charter parties. There is a plain distinction between a case of a bare-boat

charter, where the charterer mans the vessel, and a case where the charter party is a mere contract for the carriage of goods. In the former there is a clear demise; in the latter, the charterer is in substance only a shipper.[5] There is an intermediate class of charters which has given rise to many questions in various situations. Time charters of the sort now before us are in this class. The owner provides the master and crew and undertakes the navigation of the vessel and to maintain her in an efficient condition. But the master although appointed by the owner, is placed "under the orders and direction of the charterers as regards employment or agency". The owners agree "to let" the vessel and the charterers "to hire" her "from the time of delivery" until the date set for "her re-delivery". The charterers are to provide and pay for fuel supplies, port charges, pilotages, etc. and all other expenses except those pertaining to the captain, officers or crew.

There is thus a distribution of responsibility, and liability or the legal consequences of particular conduct would be determined accordingly. While the owners assumed responsibility for the navigation of the vessels and their maintenance in an efficient state, we are not concerned with any questions relating to faults in navigation or failure in maintenance. The mere fact that the owners furnished the master and crew cannot be regarded as decisive of the question before us. *See United States* v. *Shea*, 152 U. S. 178, 190, 191; *United States* v. *Carnell Steamboat Company*, 267 U. S. 281. Aside from the navigation of the vessels, they were placed under the control of the charterers and the master and crew were under their directions. The vessels by the terms of the charters were delivered to the charterers, and where the vessels were to go, and what they were to carry, within the broad limits described in the charters, were determined by the charterers.

The question whether under a charter, containing these or similar provisions, the material-man may have a lien for supplies furnished on the order of the charterer has given rise to conflicting views[6] and no little confusion has resulted.

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[5] See Reed v. United States, 11 Wall. 591, 606; Leary v. United States, 14 Wall. 607, 610; United States v. Shea, 152 U. S. 178, 189-191; The Barnstable, 181 U. S. 464, 468.

[6] See, e. g., upholding the lien: The India, 14 Fed. 476, 16 Fed. 262; The Bombay, 38 Fed. 512, 863; The George Dumois, 68 Fed. 926; The Anna E. Morse, 286 Fed. 794; The A. S. Sherman, 51 F. (2d) 782; The Golden Gate, 52 F. (2d) 397; The Eyerosa, 93 F. (2d) 732. See, e.g., *contra*: The Cratheus

We think that this conflict may be resolved by having due regard to the manifest purpose of the governing statute. The Act says nothing about types of charters. In speaking of those who shall be presumed to have authority to procure supplies, the statute expressly includes not only the "ship's husband" and the "master" but "any person to whom the management of the vessel at the port of supply is intrusted", and these persons are to be taken to include such officers and agents "when appointed by a charterer, by an owner *pro hac vice*, or by an agreed purchaser in possession of the vessel". We think that the purpose of the statute is not properly served by construing the term "management of the vessel" as referring to her "navigation". Management is a broader term connoting direction and control for the purposes for which the vessel is used. Where as in this case, apart from mere navigation, the vessel is placed under the direction and control of the charterer as the hirer of the vessel, who as such may determine to what port she shall go and what she shall carry, subject only to specified exceptions, we think the charterer must be deemed to be intrusted with the vessel's management for the purpose of applying the statutory test of authority to obtain necessary supplies upon the credit of the vessel, in the absence of a provision to the contrary.

The origin of the maritime lien is the need of the ship. *Piedmont Coal Company* v. *Seaboard Fisheries Company, supra.* The lien is given for supplies which are necessary to keep the ship going. The material-man when furnishing such supplies on the order of the charterer is charged with knowledge of the terms of the charter party when he can ascertain them, but when it appears that by these terms the charterer has direction and control of the vessel and that he is the one to obtain the essential supplies, and that there is no prohibition of the creation of a maritime lien, the material-man is protected by the terms of the statute. He furnishes the supplies on the order of the person authorized to obtain them and he is entitled to rely on the credit of the vessel as well as upon the credit of the one who gives the order.

We are of the opinion that it would thwart the purpose of the statute to compel the material-man furnishing supplies to the vessel

263 Fed. 693; Pensacola Steamship Co. v. U. S. Shipping Board, 277 Fed. 889; The Thordis, 290 Fed. 255; The Ville de Djibouti, 295 Fed. 869; The Pajala, 7 F. Supp. 618; The Dictator, 18 F. (2d) 131. Compare, The J. W. Hennessy, 57 F. (2d) 77, 80.

to resolve the ambiguities which may be found in such charters as those here involved. The statute was intended to afford the material-man a reasonably certain criterion. The owner has a simple and ready means of protection. All that it is necessary for him to do, as the material-man in dealing with the charterer is charged with notice of the charter, is to provide therein that the creation of maritime liens is prohibited. When the owner does not do so, he should not be heard to complain when it appears that it is the charterer's business to obtain supplies to keep the vessel on her way and the charter has not prohibited reliance upon the credit of the vessel.

The judgment of the Circuit Court of Appeals is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.